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Friday
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

Reader Aids
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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

Presidential Documents

Title 3—

The President

Executive Order 12852 of June 29, 1993

President's Council on Sustainable Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the "President's Council on Sustainable Development" ("Council"). The Council shall consist of not more than 25 members to be appointed by the President from the public and private sectors and who represent industrial, environmental, governmental, and not-for-profit organizations with experience relating to matters of sustainable development. The President shall designate from among the Council members such official or officials to be chairperson, chairpersons, vice-chairperson, or vice-chairpersons of the Council as he shall deem appropriate. The Council shall coordinate with and report to such officials of the executive branch as the President or the Director of the White House Office on Environmental Policy shall from time to time determine.

Sec. 2. *Functions.* (a) The Council shall advise the President on matters involving sustainable development. "Sustainable development" is broadly defined as economic growth that will benefit present and future generations without detrimentally affecting the resources or biological systems of the planet.

(b) The Council shall develop and recommend to the President a national sustainable development action strategy that will foster economic vitality.

(c) The chairperson or chairpersons may, from time to time, invite experts to submit information to the Council and may form subcommittees of the Council to review and report to the Council on the development of national and local sustainable development plans.

Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Council such information with respect to sustainable development as the Council requires to carry out its functions.

(b) Members of the Council shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) The White House Office on Environmental Policy shall obtain funding for the Council from the Department of the Interior or such other sources (including other Federal agencies) as may lawfully contribute to such activities. The funding received shall provide for the administrative and financial support of the Council.

(d) The Office of Administration in the Executive Office of the President shall, on a reimbursable basis, provide such administrative services for the Council as may be required.

Sec. 4. *General.* (a) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Office of Administration in the Executive Office

of the President in accord with the guidelines and procedures established by the Administrator of General Services.

(b) The Council shall exist for a period of 2 years from the date of this order, unless the Council's charter is subsequently extended.

(c) Executive Order No. 12737, which established the President's Commission on Environmental Quality, is revoked.

William J. Clinton

THE WHITE HOUSE,
June 29, 1993.

[FR Doc. 93–15891
Filed 6–30–93; 2:40 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks on the Council on Sustainable Development, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1076).

Presidential Documents

Executive Order 12853 of June 30, 1993

Blocking Government of Haiti Property and Prohibiting Transactions With Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolution No. 841 of June 16, 1993, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of the Government of Haiti and the *de facto* regime in Haiti, or controlled directly or indirectly by the Government of Haiti or the *de facto* regime in Haiti, or by entities, wherever located or organized, owned or controlled by the Government of Haiti or the *de facto* regime in Haiti, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, all property and interests in property of any Haitian national providing substantial financial or material contributions to the *de facto* regime in Haiti, or doing substantial business with the *de facto* regime in Haiti, as identified by the Secretary of the Treasury, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 3. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) The sale or supply, by United States persons, or from the United States, or using U.S.-registered vessels or aircraft, of petroleum or petroleum products or arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, regardless of origin, to any person or entity in Haiti or to any person or entity for the purpose of any business carried on in or operated from Haiti, and any activities by United States persons or in the United States which promote or are calculated to promote such sale or supply;

(b) The carriage on U.S.-registered vessels of petroleum or petroleum products, or arms and related materiel of all types, including weapons and

ammunition, military vehicles and equipment, police equipment and spare parts for the aforementioned, regardless of origin, with entry into, or with the intent to enter, the territory or territorial sea of Haiti;

(c) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 4. The exemption for exportation from the United States to Haiti of rice, beans, sugar, wheat flour, and cooking oil in section 2(c)(iii) of Executive Order No. 12779 shall not apply to exportations in which either the *de facto* regime in Haiti or any person identified by the Secretary of the Treasury pursuant to section 2 of this order is a direct or indirect party.

Sec. 5. For the purposes of this order:

(a) The term "Haitian national" means a citizen of Haiti, wherever located; an entity or body organized under the laws of Haiti; and any other person, entity, or body located in Haiti and engaging in the importation, storage, or distribution of products or commodities controlled by sanctions imposed on Haiti pursuant to resolutions adopted either by the United Nations Security Council or the Organization of American States, or otherwise facilitating transactions inconsistent with those sanctions.

(b) The definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purpose of this order. Such actions may include the prohibition or regulation of entry into the United States of any vessel or aircraft which is determined to have been in violation of United Nations Security Council Resolution No. 841. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 7. Section 4 of Executive Order No. 12775 and sections 2(c) and 4 of Executive Order No. 12779 are hereby revoked to the extent inconsistent with this order. Otherwise, the provisions of this order supplement the provisions of Executive Order No. 12779.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9.

(a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
June 30, 1993.

[FR Doc. 93–15929
Filed 6–30–93; 4:29 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

RIN 3206–AB42

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations concerning the processing of garnishment orders for child support and/or alimony. The amendments remove the requirement that legal process expressly name a governmental entity as the garnishee and add several new types of bonuses and allowances to the list of payments that are subject to garnishment. In addition, OPM is making technical amendments, including an amendment at the request of the Department of Veterans Affairs, and updating the list of agents designated to receive legal process.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 606–1980.

SUPPLEMENTARY INFORMATION: These amendments follow two separate notices of proposed rulemaking. The first notice of proposed rulemaking was published on March 5, 1991 (56 FR 9181), and is in response to a decision issued by the United States Court of Appeals for the Federal Circuit on September 28, 1990. In *Millard* v. *United States*, 916 F.2d 1 (Fed. Cir. 1990), the appellant obligor asserted, *inter alia*, that his employing agency, the Department of the Army, violated the garnishment regulations, 5 CFR 581.202(a), when it complied with legal process that did not specifically name the Department of the Army as garnishee. The Army countered by explaining that it interpreted OPM's regulation as being satisfied by the generic designation of "employer" which appeared on the wage assignment that it had received from the California State court. The Federal Circuit accepted the Army's interpretation, noting that the appellant debtor's interpretation of the regulation would render the regulation invalid as being clearly inconsistent with the statute. On May 13, 1991, the United States Supreme Court denied further review (111 S.Ct. 2012).

OPM's amendment clarifies the matter by revising 5 CFR 581.202(a) to state that legal process need not expressly name a governmental entity as the garnishee. OPM received only one written comment in response to its proposal. By letter dated April 17, 1991, the Federal Retirement Thrift Investment Board advised OPM that OPM had erroneously listed 5 U.S.C. 8437 as authority for the garnishment regulations in Part 581 and that in accordance with 5 U.S.C. 8474(b)(5), the Executive Director of the Board was responsible for implementing 5 U.S.C. 8437, the statutory provision permitting money held in the Thrift Savings Fund to be subject to legal process for the enforcement of child support and alimony obligations. Without referring to the Federal Circuit's decision, the Board's letter continued that the Board did not intend to make any payments from the Thrift Savings Fund in response to any legal process that did not expressly direct the payment or the garnishment of money in the Thrift Savings Plan.

In response to the Board's letter, OPM has corrected the Authority provision in part 581. OPM expressly acknowledges that 5 U.S.C. 8437 is not an authority for part 581. OPM also concurs that with regard to the garnishment of moneys in the Thrift Savings Fund, the regulatory provisions in Part 581 are inapplicable. However, OPM respectfully disagrees with any inference that 5 CFR 581.202(a) should not be amended.

On the contrary, OPM believes that in accordance with and in addition to the decision of the Federal Circuit, there are a series of critical factors which mandate the proposed amendment: the overwhelmingly clear intent of Congress to permit the United States Government to comply with legal process for child support and alimony obligations; the refusal to place form over substance and thereby shield a delinquent debtor while denying benefits to the party awarded those benefits by the reviewing court or other lawful authority; the employment relationship that results in the payment of benefits from the United States Government to the debtor; and the intent of the State court to garnish moneys payable by the United States Government to the debtor.

Based on these critical considerations, OPM has recently determined that an "Order Withholding From Earnings" issued by a Texas State court that was addressed to "any employer of the obligor" was enforceable by OPM, as the administrator of the Civil Service Retirement System, against the retirement benefits of the obligor retiree. Similarly, OPM has recently determined that an "Order Assigning Civil Service Payments" issued by a Washington State court which did not list any garnishee, but which was clearly intended to result in payment by OPM, was enforceable as legal process under part 581.

The second notice of proposed rulemaking was published on June 20, 1991 (56 FR 28350), and was made necessary by the enactment on November 5, 1990, of the Federal Employees Pay Comparability Act of 1990, Public Law 101–509, which provided, among other things, for various new types of bonuses, allowances, and adjustments. These new items have been added to the list of payments deemed to be remuneration for employment for purposes of garnishment. The Office of Management and Budget has expressly requested that OPM make this revision.

OPM received only one written comment concerning this proposal. The Director of the Division of Child Support Enforcement of the State of Virginia responded in favor of the proposal.

While not specifically related to the two proposed amendments, OPM has received comments which have resulted in various technical amendments, including a technical amendment to 5 CFR 581.104(f) requested by the Department of Veterans Affairs, and an amendment to 5 CFR 831.306(c) requested by the Department of Human Resources of the State of Alabama.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director

Accordingly, OPM is amending 5 CFR Part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for Part 581 is revised to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262) (1979).

2. Section 581.103 is amended by republishing paragraph (a) introductory text, revising paragraphs (a)(10), (a)(20), (a)(21), and (a)(22), republishing (a)(23) introductory text, revising paragraph (a)(23)(v), and by adding paragraphs (a)(24), (a)(25), (a)(26), (a)(27) and (a)(28) to read as follows:

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

* * * * *

(10) Recruitment incentives, recruitment and relocation bonuses and retention allowances;

* * * * *

(20) Cash awards, including performance-based cash awards;

(21) Agency and Presidential incentive awards (except where such award is for making a suggestion);

(22) Senior Executive Service rank and performance awards;

(23) Moneys due for the services of a deceased employee obligor, including:

* * * * *

(v) Amounts of checks drawn for moneys due which were not delivered by the governmental entity to the employee obligor prior to the employee obligor's death or which were not negotiated and returned to the governmental entity because of the death of the employee obligor, except those moneys due that are listed in § 581.104(i);

(24) Interim geographic adjustments and locality-based comparability payments;

(25) Staffing differentials;

(26) Supervisory differentials;

(27) Special pay adjustments for law enforcement officers in selected cities; and

(28) Advances in pay.

3. Section 581.104 is amended as follows:

a. Amendatory instruction 3 which appeared in the final rule under 5 CFR part 581 published August 1, 1991, (56 FR 36723) is corrected to read: "Section 581.104 is amended by revising paragraph (h) introductory text, by adding paragraph (h)(3), by revising paragraph (i), and by adding paragraphs (j) and (k) to read as follows: "

b. Paragraph (f) is revised to read as follows:

§ 581.104 Moneys which are not subject to garnishment.

* * * * *

(f) Education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of title 38, United States Code, and chapters 106 and 107 of title 10, United States Code;

* * * * *

4. Section 581.202 is amended by revising paragraphs (a) and (c) as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the designated agent of the governmental entity which has moneys due and payable to the obligor. Where the legal process is directed to a governmental entity which holds moneys which are otherwise payable to an individual, and the purpose of the legal process is to compel the governmental entity to make a payment from such money in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, the legal process need not expressly name the governmental entity as a garnishee.

* * * * *

(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) and/or (e), the process must be accompanied by a certified copy of the court order or other document establishing such legal obligations(s).

* * * * *

5. Section 581.306 is amended by revising paragraph (c) as follows:

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

* * * * *

(c) In instances where an employee obligor separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has a Thrift Savings Fund account, or has retired, or has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employees' Compensation Act, or where the employee obligor has been employed by either another governmental entity or by a private employer, and where this information is known by the governmental entity, the governmental entity shall provide the party with the designated agent for the new disbursing governmental entity or with the name and address of the private employer.

6. Appendix A to Part 581 is revised to read as follows:

Appendix A to Part 581—List of Agents Designated to Accept Legal Process

[This appendix lists the agents designated to accept legal process for the Executive Branch of the United States, the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.]

I. DEPARTMENTS

Department of Agriculture

General Counsel, Department of Agriculture, Research and Operations Division, Room 2321, South Building, 14th & Independence Ave., SW., Washington, DC 20250, (202) 720–5565

Department of Commerce

1. For employee obligors in the Office of the Secretary, Bureau of Economic Analysis, Bureau of Export Administration, Economic Development Administration, Economics and Statistics Administration, Minority Business Development Agency, National Technical Information Service, National Telecommunications and Information Administration, Technology Administration, and United States Travel and Tourism Administration:

Personnel Officer, Office of Personnel Operations, Office of the Secretary, 4th and Constitution Avenue, NW., Room 5005, Washington, DC 20230, (202) 482–3827

2. Bureau of the Census

Chief, Personnel and Payroll Systems Branch, Personnel Division, FOB #3, Room 3254, Washington, DC 20233, (301) 763–1520

For agent for decennial census employees is:

Chief, Finance Division, WP, Room 412, Washington, DC 20233, (301) 763–5654

3. International Trade Administration

Director, Personnel Management Division, 14th and Constitution Avenue, NW., Room 4809, Washington, DC 20230, (202) 482–3438

4. National Institute of Science and Technology

Personnel Officer, Office of Personnel and Civil Rights, Administration Building, Room A–123, Gaithersburg, MD 20899, (301) 975–3000

5. National Oceanic and Atmospheric Administration

A. Agent for organizations of the National Oceanic and Atmospheric Administration in the Metropolitan Washington, DC Area:

National Oceanic and Atmospheric Administration, Director, Operations Division, Office of Personnel and Civil Rights, Office of Administration, 1335 East-West Highway, Room 3352, SSMC–1, Silver Spring, MD 20910, (301) 713–0527

B. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin:

Personnel Officer, Central Administrative Support Center, NOAA CC, Federal Building, 601 East 12th Street, Room 1736, Kansas City, MO 64106, (816) 867–2056

C. Agent for National Marine Fisheries Service employees only, CASC is agent in the States of Texas, North Carolina and South Carolina. For the National Weather Service employees only, CASC is agent in the States of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming.

Personnel Officer, Eastern Administrative Support Center, NOAA EC, 253 Monticello Avenue, Norfolk, VA 23510, (804) 441–6516

D. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. For NOAA National Weather Service employees only, MASC is agent in the States of New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Georgia, Florida, and Puerto Rico.

Personnel Officer, Mountain Administrative Support Center (MASC), NOAA MC, 325 Broadway, Boulder, Colorado 80303–3328, (303) 497–6305

E. Agent for organizations of the National Oceanic and Atmospheric Administration in the States of: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, American Samoa, and the Trust Territories.

Personnel Officer, Western Administrative Support Center (WASC), NOAA WC, 7600 Sand Point Way NE., BIN C25700, Seattle, WA 98115–0070, (703) 305–8231

6. Office of the Inspector General

Personnel Officer, Resource Management Division, 14th & Constitution Avenue, NW., Room 7713, Washington, DC 20230, (202) 482–4948

7. Patent and Trademark Office

Chief, Payroll and Processing Branch, Box 3, Washington, DC 20231, (703) 305–8208

8. United States Foreign and Commercial Service

Director, Office of Foreign Service Personnel, 14th & Constitution Avenue, NW., Room 3815, Washington, DC 20230, (202) 482–3133

9. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained

Director of Personnel, Department of Commerce, 14th and Constitution Avenue, NW., Room 5001, Washington, DC 20230, (202) 377–4807

Department of Defense

Army

a. Civilian employees in Germany:

Commander, 266th Theater Finance Corps, Attention: AEUCF-CPF, APO NY 09007–0137, 049–6221–57–8911, Autovon: 370–8911

b. Nonappropriated fund civilian employees of the Army Post Exchanges:

Army and Air Force Exchange Service, Attention: CM–G–RI, P.O. Box 660202, Dallas, TX 75266–0202, (214) 312–2011

c. All other Army personnel, active and retired:

Director, DFAS—Indianapolis Center, Attention: DFAS–I–GG, Indianapolis, IN 46249, (317) 542–2155

Navy

Active duty, Reserve, Fleet reserve of retired members:

Director, Navy family Allowance Activity, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2087, (216) 522–5301

Process affecting the pay of civilian employees of the Department of the Navy, including the Marine Corps:

(i) If currently employed at Navy or Marine Corps activities (including nonappropriated fund instrumentalities) or installations situated within the territorial jurisdiction of the issuing court, such process may be served on the commanding officer or head of such activity or installation, or principal assistant specifically designated in writing by such official.

(ii) In other cases involving civilian employees, such process may be serviced in the manner indicated below:

(A) If pertaining to civil service personnel of the Navy or Marine Corps, such process may be served on:

Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, DC 20390

(B) If pertaining to non-civil service civilian personnel of Navy Exchanges or related nonappropriated fund instrumentalities administered by the Navy by Resale System Office, such process may be served on:

Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street and Third Avenue, Brooklyn NY 11232

(C) If pertaining to non-civil service personnel of Navy clubs, messes, or recreational facilities (non-appropriated funds), such process may be served on:

Chief of Navy Personnel, Director, Recreational Service Division (Pers/NMPC–72), Washington, DC 20370

(D) If pertaining to non-civil service civilian personnel of other nonappropriated fund instrumentalities which fall outside the purview of the Chief of Naval Personnel or the Commanding Officer, Navy Resale Systems Office, such as locally established morale, welfare, and other social and hobby clubs, such process may be served on the commanding officer of the activity concerned.

(E) If pertaining to non-civil personnel of any Marine Corps nonappropriated fund instrumentalities, such process may be served on the commanding officer of the activity concerned.

Marine Corps

Active duty, reserve and retired military members:

Director, DFAS—Kansas City Center (Code G), Kansas City, MO 64197–0001, (816) 926–7103

(For civilian employees of the Marine Corps, see the listing above for civilian employees of the Navy.)

Air Force

1. Active duty, Reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities.

Director, DFAS—Denver Center, Attention: GL, Denver, CO 80279–5000, (303) 676–7524

2. Nonappropriated fund civilian employees of base exchanges:

Army and Air Force Exchange Service, Attention: CM-G-RI, P.O. Box 650038, (214) 78–2005 or (214) 780–3111

3. Civilian employees of all other Air Force nonappropriated fund activities:

HQ AFMWRC/GC, Randolph AFB, TX 78150–7000, (512) 652–6691

Defense Advance Research Project Agency

Air Force District of Washington, Accounting and Finance Office, Attention: 15DA, Washington, DC 20332–5260, (202) 767–4211

Defense Communications Agency

General Counsel or Deputy General Counsel, Office of the General Counsel (Code AL), Defense Communications Agency, Washington, DC 20305–2000, (202) 692–2009

Defense Contract Audit Agency

Director of Personnel, Cameron Station, Alexandria, VA 22304–6178, (703) 274–7325

Defense Finance and Accounting Service

Director, DFAS—Columbus Center, Attention: AEP, P.O. Box 182317, Columbus, OH 43218–2317, (614) 338–7232

Defense Intelligence Agency

General Counsel, The Pentagon, Washington, DC 20340–1029, (202) 697–3945

Defense Investigative Service Deputy Director (Resources), 1900 Half Street, SW., Washington, DC 20324–1700, (202) 475–1311

Defense Logistics Agency

1. For civilian employees of the following Defense Logistics Agency (DLA) activities:

Headquarters, Defense Logistics Agency
Defense Administrative Support Center
Defense Technical Information Center
Defense Industrial Plant Equipment Center
Defense Construction Supply Center
DLA Systems Automation Center
Information Processing Center—Columbus
Defense Reutilization and Marketing Service
Defense Contract Management Command
Defense Contract Management District North Central
Defense Contract Management District Northeast
Defense Contract Management District South
Defense Contract Management District West
Defense Contract Management District—Los Angeles
Defense Depot—Columbus
Defense Depot—Memphis
Defense Distribution Region East
Defense Distribution Region West

Director, DFAS—Columbus Center, Attention: AEP, P.O. Box 182317, Columbus, OH 43218–2317, (614) 338–7232

2. Defense Electronics Supply Center: Accounting and Finance Officer (DESC–CF), 1507 Wilmington Pike, Dayton, OH 45444–5000, (513) 296–6415
3. Defense General Supply Center: Accounting and Finance Officer (DGSC–CF), Richmond, VA 23297–5000, (804) 275–4847
4. Defense Personnel Support Center: Accounting and Finance Officer (DPCS–CF), 2800 South 20th Street, Philadelphia, PA 19101–8419, (215) 737–2741
5. Defense Depot, Ogden: Accounting and Finance Officer (DDOU–CF), Ogden, UT 84407–5000, (816) 399–7538
6. Transition Management Office, Cleveland: Accounting and Finance Officer (TMO–CLE–CF), Anthony J. Celebrezze Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199–2064, (216) 552–6490
7. Transition Management Office, St. Louis: Accounting and Finance Officer (TMO–STL–CF), 1222 Spruce Street, St. Louis, MO 63103, (314) 331–5299

Defense Mapping Agency

1. For employees of the DMA Combat Support Center, the DMA Hydrographic/Topographic Center, the Defense Mapping School, and Headquarters:

Associate General Counsel, DMA Hydrographic/Topographic Center, 6500 Brookes Lane, Washington, DC 20315–0030, (202) 227–2268

2. For employees of the DMA Aerospace Center:

Associate General Counsel, DMA Aerospace Center, 3200 South Second Street, St. Louis, MO 63118–3399, (314) 263–4501

3. For employees of the DMA Reston Center, the DMA Systems Center, and the DMA Telecommunications Services Center:

Associate General Counsel, DMA Systems Center, 12100 Sunset Hills Road, Suite 200, Reston, VA 22090–3207, (703) 487–8106

Defense Nuclear Agency

1. For employees at Kirtland AFB, New Mexico: Director, Defense Finance and Accounting Service, Attention: JA, Denver, CO 80279–5000, (303) 676–7524
2. For all other DNA employees: General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681

Uniformed Services University of the Health Sciences, Director, Personnel/Manpower, Civilian Personnel, 4301 Jones Bridge Road, Bethesda, MD 20814–4799, (301) 295–3081

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Department, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

Department of Education

Assistant General Counsel, Division of Business and Administrative Law, Room 4091, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–2110, (202) 401–3690

Department of Energy

Power Administrations

1. Alaska Power Administration Administrator: Alaska Power Administration, Department of Energy, P.O. Box 020050, Juneau, AK 99802–0050, (907) 586–7405
2. Bonneville Power Administration: Chief, Payroll Section DSDP, Bonneville Power Administration, Department of Energy, 905 NE. 11th Avenue, Portland, OR 97232, (503) 230–3203
3. Southeastern Power Administration: Chief, Payroll Branch, Department of Energy, Room 1E–184, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5581
4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O. Box Drawer 1619, Tulsa, OK 74101, (918) 581–7426
5. Western Area Power Administration: General Counsel, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1529

Field Offices

1. Albuquerque Operations Office: Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (505) 844–7265
2. Chicago Operations Office: Chief Counsel, Chicago Operations Office, Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2032
3. Idaho Operations Office: Chief, Field Office Accounting Section, Finance and Budget Division, Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, (208) 526–1822
4. Nevada Operations Office: Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room 259, Washington, DC 20585, (301) 903–4012
5. Oak Ridge Operations Office: Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box 20001, Oak Ridge, TN 37831–8510 (615) 576–1200
6. Richland Operations Office: Chief Counsel, Richland Operations Office, Department of Energy, P.O. Box 550, Richland, WA 99352, (509) 376–7311
7. San Francisco Operations Office: Chief, Accounting Branch, Financial Management Division, Department of Energy, 1333 Broadway, Oakland, CA 94612, (415) 273–4258
8. Savannah River Operations Office: Director, Financial Management and Program Support Division, Department of Energy, P.O. Box A, Aiken, SC 29802, (803) 725–5590
9. Washington DC Headquarters, Pittsburgh Naval Reactors Office, Schnectady Naval Reactors Office, and all other organizations within the Department of Energy: Chief, Payroll Branch, CR–431, Department of Energy, GTN Building, Room E–259, Washington, DC 20585, (301) 903–4012

Department of Health and Human Services

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services:

Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave. SW., Washington, DC 20201, (202) 619–0150

2. For the garnishment of benefits under title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numbers of Social Security District and Branch Offices may be found in the local telephone directory.

Department of Housing and Urban Development

Chief, Systems Support Branch, Evaluation and Systems Division, Department of Housing and Urban Development, 451 7th Street SW., room 2102, Washington, DC 20410, (202) 755–6116

Department of the Interior

Secretarial Offices

Chief, Division of Fiscal Services, Department of the Interior, 18th & C Streets NW., room 5257, Washington, DC 20240, (202) 208–5027

Bureau of Mines

Chief, Division of Finance, Bureau of Mines, Department of the Interior, Denver Federal Center, Bldg. 20, room D–2243, Denver, CO 80225, (303) 236–0355

Fish and Wildlife Service

Chief, Division of Finance, Fish and Wildlife Service, Department of the Interior, Mail Stop 380, Arlington Square, 4401 North Fairfax Drive, Arlington, VA 22203, (703) 358–1742

Geological Survey

Chief, Office of Financial Management, Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, VA 22092, (703) 648–7604

National Park Service

a. For employees of the National Capital Region:

Associate Regional Director, Administration, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, DC 20242, (202) 619–7200

b. For employees of the North Atlantic Region:

Associate Regional Director, Administration, North Atlantic Region, National Park Service, 15 State Street, Boston, MA 02109, (617) 835–8833

c. For employees of the Mid-Atlantic Region:

Associate Regional Director, Administration, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, PA 19106, (215) 597–4818

d. For employees of the Southeast Region:

Associate Regional Director, Administration, Southeast Region, National Park Service, 75 Spring Street SW., Atlanta, GA 30303, (404) 864–3495

e. For employees of the Midwest Region:

Associate Regional Director, Administration, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, NE 68102, (402) 864–3495

f. For employees of the Southwest Region:

Associate Regional Director, Administration, Southwest Region, National Park Service, Old Santa Fe Trail, P.O. Box 728, Santa Fe, NM 87501, (505) 476–6386

g. For employees of the Rocky Mountain Region:

Associate Regional Director, Administration, Rocky Mountain Region, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, CO 80215, (303) 327–2700

h. For employees of the Western Region:

Associate Regional Director, Administration, Western Region, National Park Service, 450 Golden Gate Avenue, P.O. Box 36036, San Francisco, CA 94102, (415) 556–4540

i. For employees of the Pacific Northwest Region:

Associate Regional Director, Administration, Pacific Northwest Region, National Park Service, 601 Fourth and Pike Building, Seattle, WA 98101, (206) 399–4658

j. For employees of the Alaska Region:

Associate Regional Director, Administration, Alaska Region, National Park Service, 2525 Gambell Street, room 107, Anchorage, AK 99503, (907) 271–2695

k. For all other employees of the National Park Service or where the garnishor is not certain as to which region the legal process should be sent:

Chief Personnel Officer, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202) 208–5093

Bureau of Reclamation

Deputy Assistant Commissioner—Administration, Bureau of Reclamation, Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225, (303) 776–0005

Bureau of Indian Affairs

Chief, Branch of Payroll Liaison, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue, SW., Albuquerque, NM 87103, (505) 766–2936

Office of Surface Mining Reclamation and Enforcement

Chief, Division of Financial Management, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, P.O. Box 25065, Denver, CO 80225, (303) 236–0331

Bureau of Land Management

Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets, NW., Room 3070, Washington, DC 20240, (202) 208–6743

Department of Justice

Justice Management Division

Personnel Office, Payroll Unit, 633 Indiana Avenue, NW., Room 402, Washington, DC 20530, (202) 514–6810

U.S. Trustees Programs

Personnel Office, 901 E Street, NW., Room 770, Washington, DC 20530, (202) 307–1215

United States Marshals Service

Policy and Pay Branch, 600 Army Navy Drive, Suite 800, Arlington, VA 22202–4210, (202) 307–9629

Office of Justice Programs

Office of Personnel, 633 Indiana Avenue, NW., Room 603, Washington, DC 20531, (202) 307–0724

Office of the Inspector General

Personnel Division, 1400 L Street, NW., Room 552, Washington, DC 20537, (202) 633–3351

Immigration and Naturalization Service

Director of Personnel, Personnel Division, 3rd Floor, 111 Massachusetts Avenue, NW., Washington, DC 20536, (202) 514–2690

Federal Bureau of Prisons/Federal Prison Industries (UNICOR)

Human Resource Management Division, HRMIS Section, 320 1st St., NW., Room 440, Washington, DC 20534, (202) 307–3250

Drug Enforcement Administration

Office of Personnel, Employee Relations Unit, 700 Army Navy Drive, Room W3054, Arlington, VA 22202, (202) 307–8888

Office of the United States Attorneys

Executive Office for United States Attorneys, Personnel Office, Patrick Henry Building, 601 D Street, NW., Room 6517, Washington, DC 20530, (202) 501–6921

Federal Bureau of Investigation

Personnel Officer, FBI Headquarters, J. Edgar Hoover Building, 10th Street & Pennsylvania Avenue, NW., Room 6012, Washington, DC 20535, (202) 324–3514

Department of Labor

1. Payments to employees of the Department of Labor.

Director, Office of Accounting, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8314

2. Process relating to those exceptional cases where there is money due and payable by the United States under the Longshoreman's Act should be directed to the:

Associate Director for Longshore and Harbor Workers' Compensation, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8721

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs:

District No. 1

District Director, Office of Workers' Compensation Programs, Room 1800, John F. Kennedy Building, Government Center, Boston, MA 12203, (617) 565–2137

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

District Director, Office of Workers' Compensation Programs, 201 Varick Street, Room 750, P.O. Box 566, New York, NY 10014–0566, (212) 337–2075

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

District Director, Office of Workers' Compensation Programs, Gateway Building, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1457

Delaware, Pennsylvania, and West Virginia

District No. 6

District Director, Office of Workers' Compensation Programs, 214 N. Hogan Street, Suite 1026, Jacksonville, FL 32202, (904) 232–2821

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 9

District Director, Office of Workers' Compensation Programs, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–3800

Indiana, Michigan, and Ohio

District No. 10

District Director, Office of Workers' Compensation Programs, 230 S. Dearborn

Street, 8th Floor, Chicago, IL 60604, (312) 353–5656

Illinois, Minnesota, and Wisconsin

District No. 11

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Iowa, Kansas, Missouri, and Nebraska

District No. 12

District Director, Office of Workers' Compensation Programs, 1801 California Street, Suite 915, Denver, CO 80202, (303) 391–6000

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

District Director, Office of Workers' Compensation Programs, 71 Stevenson Street, 2nd Floor, P.O. Box 3769, San Francisco, CA 94119–3769, (415) 744–6610

Arizona, California, Hawaii, Guam and Nevada

District No. 14

District Director, Officer of Workers' Compensation Programs, 111 Third Avenue, Suite 615, Seattle, WA 98101, (206) 553–5508

Alaska, Idaho, Oregon, and Washington

District No. 16

District Director, Office of Workers' Compensation Programs, 525 Griffin Street, Room 100, Dallas, TX 75202, (214) 767–2580

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 25

District Director, Office of Workers' Compensation Programs, 800 N. Capitol Street, Room 800, Washington, DC 20211, (202) 724–0713

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the:

Regional Director, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 426–2195

Department of State

Executive Director (L/EX), Office of the Legal Adviser, Department of State, 22nd and C street, NW, Room 5519A, Washington, DC 20520, (202) 647–8323

Department of Transportation

Office of the Secretary

General Counsel, 400 7th Street, SW., Washington, DC 20590, (202) 366–4702

United States Coast Guard

Commanding Officer (L), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 SE. Quincy Street, Topeka, KS 66683–3591, (913) 295–2520

Federal Aviation Administration

1. Headquarters (Washington, DC) and overseas employees:

Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3362

2. Central Region (Nebraska, Kansas, Iowa, Missouri, Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, North Dakota, and South Dakota):

Regional Counsel, ACE–7, 601 E. 12th Street, Kansas City, MO 64106, (816) 374–5446

3. Southern Region (Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama, the Virgin Islands, Arkansas, Louisiana, Oklahoma, Texas, New Mexico); FAA Technical Center (Atlantic City, New Jersey); and Metropolitan Washington Airports:

Regional Counsel, ASO–7, P.O. Box 20636, Atlanta, GA 30320, (404) 763–7204

4. Mike Monroney Aeronautical Center; Alaskan Region (Alaska); Eastern Region (New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware, and Virginia); New England Region (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island); Northwest Mountain Region (Washington, Oregon, Montana, Utah, Colorado, Idaho, and Wyoming); and Western Pacific Region (Arizona, California, Hawaii, Nevada, Pacific-Asia Area, including Guam, American Samoa, Northern Mariana Islands, and Japan);

Aeronautical Center Counsel, AAC–7, P.O. Box 25082, Oklahoma City, OK 73103, (405) 686–2296

Federal Highway Administration

Chief Counsel, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–0740

Federal Railroad Administration

Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–0767

Maritime Administration

Chief Counsel, Maritime Administration, Room 7232, 400 7th Street, SW., Washington, DC 20590, (202) 366–5711

National Highway Traffic Safety Administration

Chief Counsel, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–9511

Urban Mass Transportation Administration

Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–4063

St. Lawrence Seaway Development Corporation

General Counsel, St. Lawrence Seaway Development Corporation, P.O. Box 520, Massena, NY 13662, (315) 764–3200

Research and Special Programs Administration

Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–4400

Department of the Treasury

(1) Departmental Offices

Assistant General Counsel (Administrative and General Law), U.S. Treasury Department, 1500 Pennsylvania Avenue, NW., Room 1410, Washington, DC 20220, (202) 622–0450

(2) Office of Foreign Assets Control

Chief Counsel, Second Floor, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–2410

(3) U.S. Savings Bonds Division

Chief Counsel, U.S. Mint, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874–6040

(4) Financial Management Service

Chief Counsel, 401 14th Street, SW., Room 531, Washington, DC 20227, (202) 874–6680

(5) Internal Revenue Service

Assistant Chief Counsel, General Legal Services, Suite 208, Box 69, 370 L'Enfant Promenade, SW., Washington, DC 20024–2518, (202) 401–4000

(6) Bureau of Alcohol, Tobacco & Firearms

Chief Counsel, 640 Massachusetts Avenue, NW., Room 6100, Washington, DC 20226, (202) 927–7772

(7) Bureau of the Public Debt

Chief Counsel, 999 E Street, NW., Room 503, Washington, DC 20239, (202) 219–3320

(8) Secret Service

Legal Counsel, 1800 G Street, NW., Room 842, Washington, DC 20223, (202) 435–5771

(9) Bureau of Engraving & Printing

Legal Counsel, 14th & C Streets, NW., Room 306M, Washington, DC 20228, (202) 874–2500

(10) Office of the Comptroller of the Currency

Director, Litigation, Office of Chief Counsel, 250 E Street, SW., Eighth Floor, Washington, DC 20219, (202) 874–5280

(11) United States Mint

Chief Counsel, 633 3rd Street, NW., Room 733, Washington, DC 20220, (202) 874–6040

(12) Federal Law Enforcement Training Center

Legal Counsel, Building 69, Glynco, GA 31524, (912) 267–2100

(13) Customs Service

Assistant Chief Counsel, P.O. Box 68914, Indianapolis, IN 46278, (317) 298–1233

(14) Office of Thrift Supervision, Chief Counsel, 1700 G Street, NW., Fifth Floor, Washington, DC 20552, (202) 906–6268

Department of Veterans Affairs (VA)

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36193, (205) 272–4670 ext. 4709

National Cemetery Area Office, 700 South 19th Street, Birmingham, AL 35233, (205) 939–2103

Mobile Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972 ext. 225

Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104, (205) 832–7172

Fiscal Officer Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109, (205) 272–4670 ext. 204

Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35404, (205) 553–3760

Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083, (205) 727–0550 ext. 0622

Alaska

Fiscal Officer, Anchorage Regional Office, Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250

Arizona

Cave Creek National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85012, (606) 241–2735

Fiscal Officer, Phoenix Medical Center, Seventh Street & Indian School Road, Phoenix, AZ 85012, (602) 277–5551

Fiscal Officer, Prescott Medical Center, Prescott, AZ 86301, (602) 445–4860 ext. 264

Prescott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Prescott, AZ 86301, (602) 445–4860 ext. 264

Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723, (602) 792–1450 ext. 710

Arkansas

Fayetteville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fort Smith National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72205, (501) 378–5142

Fiscal Officer, John L. McClellan Memorial, Veterans Hospital, 4300 West 7th Street (04), Little Rock, AR 72205, (501) 661–1202 ext. 1310

Fiscal Officer, VA Regional Office, Send to: VA Medical Center, 1100 N. College Avenue, Fayetteville, AR 72701, (501) 444–5007

Send to: Fiscal Officer, VA Regional Office, Building 65, Fort Roots, P.O. Box 1280, North Little Rock, Little Rock, AR 72115, (501) 370–3741

California

Bell Supply Depot, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800

Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, California 93703, (209) 225–6100

Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447–2560 ext. 317

Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084 ext. 2550/2551

Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498–1313 ext. 2101

Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernadino, San Luis Obispo, Santa Barbara and Ventura.

Los Angeles Data Processing Center, Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 209–7565

Fiscal Officer, Los Angeles Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 894–3870

Los Angeles Regional Office of Audit, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 824–4402

Los Angeles Field Office of Audit, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

Los Angeles National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Brentwood Division, Los Angeles, CA 90073, (213) 478–3478

Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (415) 228–6680 ext. 235

Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493–5000 ext. 5643

Riverside National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center—Wadsworth Division, Los Angeles, CA 90073, (213) 478–3478

San Bruno National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810 ext. 315/316

Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

San Diego Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351

Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108, (714) 289–5703

Jurisdiction over the following counties in California: Imperial, Riverside and San Diego.

San Francisco National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Officer, 4150 Clement Street, San Francisco, CA 94121, (415) 556–0483

Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105, (415) 974–0160

Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.

Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121, (415) 221–4810 ext. 315/316

Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343, (818) 891–2377

Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Bldg. 20, P.O. Box 25126, Denver, CO 80225, (303) 234–3920

Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Denver National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Logan National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220, (303) 393–2813

Fort Lyon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038, (719) 384–3987

Fiscal Officer, Grand Junction Medical Center, 2121 North Avenue, Grand Junction, CO 81501, (303) 242–0731 ext. 275

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103, (203) 244–3217

Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111, (203) 666–6951 ext. 369

Fiscal Officer, West Haven Medical Center, 950 Campbell Avenue, West Haven, CT 06516, (203) 932–5711 ext. 859

Delaware

Fiscal Officer, Wilmington Medical, and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 633–5432

District of Columbia

Finance Division Chief (047H), Washington Central Office, Room C–50, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3901

Washington Veterans Canteen Service Field Office, Send to: Finance Division Chief (047H), VA Central Office, Room C–50, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3901

Fiscal Officer, Washington Regional Office, 941 North Capitol Street, NE., Washington, DC 20421, (202) 275–1349

Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, the Trust Territory of the Pacific Islands, the Virgin Islands and the Philippines. Also, jurisdiction over Prince George's and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8229

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504, (813) 398–9321

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32601, (904) 376–1611 ext. 6685

Jacksonville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685

Jacksonville VA Office, Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Lake City Medical Center, 801 South Marion Street, Lake City, FL 32055, (904) 755–3016

Miami VA Office, Send to: Fiscal Officer VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731, (813) 893–3236

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Orlando Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612, (813) 971–4500

Fiscal Officer, James A. Haley Veterans' Hospital, 13000 Bruce B. Downs Blvd., Tampa, FL 33612, (813) 972–7501

Riviera Beach Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th Street, Miami, FL 33125, (305) 324–4284

Pensácola National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501, (601) 863–1972 ext. 225

St. Augustine National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 SW. Archer Road, Gainesville, FL 32602, (904) 376–1611 ext. 6685

Fiscal Officer, St. Petersburg Regional Office, P.O. Box 1437, St. Petersburg, FL 33731, (813) 893–3236

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30365, (404) 347–5008

Atlanta Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Office, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Atlanta Field Office of Audit, Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street, NE., Atlanta, GA 30365, (404) 347–5008

Fiscal Officer, Augusta Medical Center, Augusta, GA 30910, (404) 733–4471 ext. 675/676

Fiscal Officer, VA Medical Center, 2460 Wrightsboro Road, Augusta, GA 30910, (404) 724–5116

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111 ext. 6320

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021, (912) 272–1210 ext. 373

Marietta National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033, (404) 321–6111

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 541–1490

Jurisdiction over American Samoa, Guam, Wake, Midway, and the Trust Territory of the Pacific Islands.

Honolulu National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850, (808) 546–2109

Idaho

Fiscal Officer, Boise Medical Center, 500 West Fort Street, Boise, ID 83702, (208) 336–5100 ext. 7312

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort Street, Box 044, Boise, ID 83724, (208) 334–1009

Illinois

Alton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631

AMF O'Hare Field Office of Audit, Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141, (312) 343–7200 ext. 2481

Fiscal Officer, Chicago Medical Center (Lakeside), 333 East Huron Street, Chicago, IL 60611, (312) 943–6600

Fiscal Officer, Chicago Medical Center (West Side), 820 South Damen Avenue, Chicago, IL 60612, (312) 666–6500 ext. 3338

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680, (312) 886–9417

Fiscal Officer, Danville Medical Center, Danville, IL 61832, (217) 442–8000

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1900 E. Street, Danville, IL 61832, (217) 442–8000 ext. 210

Fiscal Officer, Hines Medical Center, Hines, IL 60141, (708) 343–7200 ext. 2481

Hines Marketing Center, Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (708) 786–6020

Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141, (708) 786–6020

Fiscal Officer, Hines Data Processing Center, P.O Box 66303, AMF O'Hare, Hines, IL 60666, (708) 681–6650

Fiscal Officer, Marion Medical Center, Marion, IL 62959, (618) 997–5311

Mound City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2401 West Main Street, Marion, IL 62959, (618) 997–5311

Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064, (312) 689–1900

Quincy National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 304

Rock Island National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 304

Springfield National Cemetery Area Officer, Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832, (217) 442–8000

Indiana

Evansville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959, (618) 997–5311

Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46835, (219) 426–5431

Fiscal Officer, Indianapolis Regional Office, 575 North Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7840

Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363

Indianapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202, (317) 635–7401 ext. 2363

Fiscal Officer, Marion Medical Center, Marion, IN 46952, (317) 674–3321 ext. 214

Marion National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952, (317) 674–3321 ext. 211

New Albany National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4220

Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310, (515) 255–2173

Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52246, (319) 338–0581 ext. 7702

Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52246, (319) 228–052

Keokuk National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240, (319) 228–052

Kansas

Ft. Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Ft. Scott National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Leavenworth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048, (913) 682–2000 ext. 214

Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622, (913) 272–3111 ext. 521

Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2221 ext. 256

Wichita Regional Office, Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211, (316) 685–2111 ext. 256

Process for VA service-connected benefits should also be sent to the Wichita Medical Center rather than to the Wichita Regional Office.

Fiscal Officer, VA Regional Office, 901 George Washington Blvd., Wichita, KS 67211, (316) 269–6813

Kentucky

Danville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511, (606) 223–4511

Fiscal Officer, Knoxville Medical Center, Knoxville, KY 50138, (515) 842–3101 ext. 241

Lebanon National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Lexington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507, (606) 233–4511

Fiscal Officer, Lexington Medical Center, Lexington, KY 40507, (606) 233–4511

Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202, (502) 582–6482

Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Louisville National Cemetery Area Office, (Zachary Taylor), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Louisville National Cemetery Area Office (Cave Hill), Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202, (502) 895–3401 ext. 241

Nancy National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Lexington, KY 40511, (606) 233–4511

Nicholasville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511, (606) 233–4511

Perryville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40511 (606) 233–4511

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71301, (318) 473–0010 ext. 2281

Baton Rouge National Cemetery Area Office, Send: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604

Fiscal Officer, New Orleans Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Baton Rouge National Cemetery, 220 North 19th Street, Baton Rouge, LA 70806, (504) 389–0788

Pineville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301, (318) 442–0251

Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101, (318) 221–8411 ext. 722

Shreveport VA Office, Send to: Fiscal Officer, VA Regional Officer, 701 Loyola Avenue, New Orleans, LA 70113, (504) 589–6604

Port Hudson (Zachary) National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146, (504) 568–0811

Maine

Portland VA Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330, (207) 623–8411

Togus National Cemetery Area Office, Send to: Fiscal Officer, VA Center, Togus, ME 04330, (207) 623–8411

Maryland

Annapolis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd, Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201, (301) 962–4410

Jurisdiction does not include Prince Georges and Montgomery Counties which are included under the Washington, DC. Regional Office.

Baltimore Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Baltimore National Cemetery Area Office, (Loudon Park), Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218, (301) 467–9932 ext. 5281/5282

Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052, (301) 687–8768 ext 328,

Hyattsville Field Office of Audit, Send to: Fiscal Division Chief (047H), VA Central Office, Room C–50, 810 Vermont Avenue, Washington, DC. 20420, (202) 389–3901

Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902, (301) 642–2411 ext. 5224/5225

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730, (617) 275–7500

Fiscal Officer, Boston Regional Office, John F. Kennedy Bldg., Room 400C, Government Center, Boston, MA 02203, (617) 565–2616

Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.

Boston Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420

Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 232–9500 ext. 427/420

Bourne National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266

Fiscal Officer, Brockton Medical Center, Brockton, MA 02401, (617) 583–4500 ext. 266

Lowell Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130, (617) 322–9500 ext. 427/420

New Bedford Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908, (401) 273–7100

Fiscal Officer, Northampton Medical Center, Northampton, MA 01060, (413) 584–4040

Springfield Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060, (413) 584–4040

Springfield VA Office, Send to: Fiscal Officer, VA Regional Office, John F. Kennedy Bldg. Rm 400C, Government Center, Boston, MA 02203, (617) 565–2616

Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 323–7700 ext. 5650

Worcester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132, (617) 322–7700 ext. 5650

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101, (313) 562–6000 ext. 535

Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105, (313) 769–7100 ext. 288/289

Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566

Grand Rapids Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Battle Creek, MI 49016, (616) 966–5600 ext. 3566

Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226, (313) 226–4190

Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774–3300 ext. 308

Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340 ext. 3061

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South Minneapolis, MN 55417, (612) 725–6767 ext. 6311

Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252–1600 ext. 411

Fiscal Officer, St. Paul Center, (Regional Office), Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–4075

Fiscal Officer, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417, (612) 725–2150

Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Office, Send to: VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311

St. Paul Data Processing Center, Send to: Fiscal Officer, Va Center, Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–3075

St. Paul Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, Minneapolis, MN 55417, (612) 725–6767 ext. 6311

Mississippi

Biloxi National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225

Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225

Corinth National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990

Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863–1972 ext. 225

Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1281

Fiscal Officer, VA Regional Office, Federal Building, 100 W. Capitol St., Suite 207, Jackson, MS 39269, (601) 965–4853

Natchez National Cemetery, Send to: Fiscal Officer, VA Medical Center, 1500 E. Woodrow Wilson Dr., Jackson, MS 39216, (601) 362–4471 ext. 1281

Process for VA service-connected benefits should also be sent to the Jackson Medical Center rather than to the Jackson Regional Office.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511

Jefferson City National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511 ext. 6050

Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861–4700 ext. 214

Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff MO 63901, (314) 686–4151

St. Louis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4931

Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112

Fiscal Officer, VA Medical Center, 1500 N. Westwood Blvd., Poplar Bluff, MO 63901, (314) 686–4151 ext. 265

St. Louis Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125, (314) 894–4631

Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125, (314) 894–4631

St. Louis Records Processing Center, Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103, (314) 539–3112

Springfield National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701, (501) 443–4301

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636, (406) 442–6410

Fiscal Officer, Miles City Medical Center, 210 South Winchester, Miles City, MT 59301, (406) 232–3060

Nebraska

Fiscal Officer, Grand Island Medical Center, 2201 N. Broadwell, Grand Island, NE 68801, (308) 382–3660 ext. 244

Fiscal Officer, Lincoln Regional Office, 5631 South 48th Street, Lincoln, NE 68516, (402) 437–5041

Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510, (402) 489–3802 ext. 332

Maxwell National Cemetery Area Office, Send to: Fiscal Officer,VA Medical Center, Grand Island, NE 68801, (308) 382–3660 ext. 244

Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105, (402) 346–8800 ext. 4538

Nevada

Las Vegas Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1701 West Charleston Boulevard, Las Vegas, NV 89102, (702) 786–7200 ext. 244

Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV 89520, (702) 784–5637

Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.

Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244

Henderson Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520, (702) 786–7200 ext. 244

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03101, (603) 666–7638

Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104, (603) 624–4366

New Jersey

Beverly National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 382–2400 ext. 291/292

Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 1771

Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939, (201) 647–0180 ext. 4302

Newark, Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019, (201) 676–1000 ext. 125

Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102, (201) 645–3507

Salem National Cemetery Area Office, Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805, (302) 994–2511

Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876, (210) 725–2540

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue, SW., Albuquerque, NM 87102, (505) 766–2204

Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108, (505) 265–1711

Santa Fe National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE., Albuquerque, NM 87108, (505) 265–1711 Ext. 2214

New York

Fiscal Officer, Albany Medical Center, 113 Holland Ave., Albany, NY 12208, (518) 462–3311 ext. 355

Fiscal Officer, VA Medical Center, 800 Irving Center, Syracuse, NY 13210, (315) 476–7461 ext. 2358

Albany VA Office, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue & 24th Street, New York, NY 10001, (211) 620–6293

Fiscal Officer, Batavia Medical Center, Redfield Parkway, Batavia, NY 14020, (716) 345–7500 ext. 215

Fiscal Officer, Bath Medical Center, Bath, NY 14810, (607) 776–2111 ext. 1502

Fiscal Officer, Bronx Medical Center, 130 W. Kings Bridge Road, Bronx, NY 10408, (212) 584–9000 ext. 1502/1717

Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Brooklyn National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3541

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Brooklyn Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209, (718) 630–3542

Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Jurisdiction over all counties in New York not listed under the New York Regional Office.

Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215, (716) 834–9200 ext. 2426, 584–900 ext. 1603/1717

Calverton National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 7101/7103

Fiscal Officer, Canandiagua Medical Center, Canandiagua, NY 14424, (716) 394–2000 ext. 3368

Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511, (914) 882–5404

Elmira National Cemetery Area Office, Send to: Fiscal Officer VA Medical Center, Bath, NY 14810, (607) 776–2111

Farmingdale National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Fiscal Officer, Montrose Medical Center, Montrose, NY 10548, (914) 737–4400 ext. 2463

Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7220

New York Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

New York Prosthetics Center, Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001, (212) 620–6293

Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001, (212) 620–6293

Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Veterans Canteen Service Field Office, Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010, (212) 686–7320

Fiscal Officer, Northport Medical Center, Northport, NY 11768, (516) 261–4400 ext. 2462/2463

Rochester VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

Rochester Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020, (716) 343–7500 ext. 215

Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210, (315) 476–7461

Syracuse VA Office, Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202, (716) 846–5251

North Carolina

Fiscal Officer, Asheville Medical Center, 1100 Tunnel Road, Asheville, NC 28805, (704) 298–7911 ext. 5616

Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 671–6913

Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

New Bern National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

Raleigh National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–0411 ext. 6469

Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144, (704) 636–2351

Salisbury National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

Wilmington National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120

Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27155, (919) 761–3513

Winston-Salem Outpatient Regional Office, Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58103, (701) 232–3241 ext. 249

See listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141 ext. 203

Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 550–5040 ext. 4113

Fiscal Officer, VA Medical Center, 2090 Kenny Road, Columbus, OH 43221, (614) 469–6712

Cincinnati VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44109, (216) 522–3540

Fiscal Officer, Cleveland Medical Center, 10,000 Brecksville Rd., Brecksville, OH 44141, (216) 526–3030 ext. 7170

Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43221, (614) 469–6712

Columbus VA Office, Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540

Dayton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Dayton, OH 45248, (513) 268–6511 ext. 262–2157

Fiscal Office, VA Medical Center, 4100 W. Third Street, Dayton, OH 45428, (513) 262–2157

Oklahoma

Fort Gibson National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261 ext. 392

Fiscal Officer, Muskogee Regional Office, 125 South Main Street, Muskogee, OK 74401, (918) 687–2169

Fiscal Officer, Muskogee Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401, (918) 683–3261 ext 392

Fiscal Officer, Oklahoma City Medical Center, 921 Northeast 13th Street, Oklahoma City, OK 73104, (405) 272–9876 ext. 500

Oklahoma City VA Office, Send to: Fiscal Officer, VA Regional Office, 125 South Main St., Muskogee, OK 74401, (908) 687–2169

Oregon

Portland National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204, (503) 221–2521

Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

Portland Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 222–9221 ext. 6984

Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 440–1000 ext. 4261

Roseburg National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Garden Valley Blvd., Roseburg, OR 97470, (503) 672–4411

Fiscal Officer, White City Domiciliary, White City, OR 97503, (503) 826–2111 ext. 241

White City National Cemetery Area, Send to: Fiscal Officer, VA Office Domiciliary, White City, OR 97503, (503) 826–2111 ext. 241

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16602, (814) 943–8164 ext. 7046

Annville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, VA Medical Center, Butler, PA 16001, (412) 287–4781 ext. 4505

Fiscal Officer, Coatesville Medical Center, Coatesville, PA 19320, (215) 384–7711 ext. 342

Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501, (814) 868–8661

Harrisburg Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042, (717) 272–6621 ext. 229

Fiscal Officer, Philadelphia Center, (Regional Office) P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5321

Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monore, Montgomery Monroe, Montour, Northampton,

Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York.

Philadelphia Data Processing Center, Send to: Fiscal Officer, VA Medical Center, P.O. Box 13399, Philadelphia, PA 19101, (215) 951–5321

Philadelphia National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951–5321

Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104, (215) 951–5321

Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–4394

Jurisdiction over all of the counties in Pennsylvania that are not listed under the Philadelphia Center (Regional Office) and jurisdiction over the following counties in West Virginia: Brooke, Hancock, Marshall and Ohio.

Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburg, PA 15206, (412) 363–4900 ext. 4235

Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683–3000 ext. 639

Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711, (717) 824–3521, ext 7211

Philippines

Manila Regional Office Outpatient Clinic and Manila Regional Office Center

For either of the above, send to:

Director, Department of Veterans Affairs, APO, San Francisco, CA 96528, 011–632–521–7116 ext. 2560

Puerto Rico

Raymon National Cemetery Area Office, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 766–5115

Hato Regional Office, GPO Box 4867, San Juan, PR 00936, (809) 766–5115

Mayaguez Outpatient Clinic Substation, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758–7575 ext. 4953

Rio Piedras Medical and Regional Office Center, Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936, (809) 758–7575 ext. 4953

Fiscal Officer, VA Medical Center, One Veterans Plaza, San Juan, PR 00927–5800, (809) 758–5365 or (809) 758–5953

Rhode Island

Fiscal Officer, Providence Regional Office, 380 Westminister Mall, Providence, RI 02903, (401) 528–4439

Jurisdiction over the following towns and counties in Massachusetts: all towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.

Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908, (401) 475–3019

South Carolina

Beaufort National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext. 222

Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403, (803) 577–5011 ext 222

Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201, (803) 765–5210

Fiscal Officer, Columbia Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 150

Florence National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

Greenville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201, (803) 776–4000 ext. 149

South Dakota

Fort Meade National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Fiscal Officer, VA Medical Center, Fort Meade, SD 57741, (605) 347–2511 ext. 272

Hot Springs National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747, (605) 745–4101 ext. 246

Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747, (605) 745–4101

Tennessee

Chattanooga Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4651

Chattanooga National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37130, (615) 893–1360

Knoxville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Knoxville Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4751 ext. 553

Madison National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203, (615) 327–4751 ext. 553

Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990 ext. 5050

Memphis National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8901 ext. 50

Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684, (615) 926–1171 ext. 7601

Mountain Home National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684, (615) 926–1171

Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130, (615) 893–1360 ext 3198

Fiscal Officer, National Regional Office, 110 Ninth Avenue South, Nashville, TN 37203, (615) 736–5352

Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37212, (615) 327–4751 ext. 5147

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd. W., Amarillo, TX 79106, (806) 355–9703 ext. 7370

Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772, (512) 389–5000

Beaumont Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 794–7104

Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720, (915) 263–7361 ext. 326

Fiscal Officer, Bonham Medical Center, East 9th & Lipscomb Street, Bonham, TX 75418, (218) 583–2111 ext. 240

Corpus Christi Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Road, Dallas, TX 75216, (214) 376–5451 ext. 5238

Dallas VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454

Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7960/7961

Fort Bliss National Cemetery Area Office, Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925, (915) 540–7960/7961

Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77030, (713) 794–7104

Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4121

Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Fric, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenndall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patrico, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata and Zavala.

Houston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211, (713) 795–7493

Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028, (512) 896–2020 ext. 300,

Kerrville National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028, (512) 896–2020 ext. 300

Lubbock VA Office, Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76799, (817) 757–6454 ext. 635

Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7209

Fiscal Officer, Marlin Medical Center, 1016 Ward Street, Marlin, TX 76661, (817) 883–3511 ext. 224

McAllen Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 617–5300 ext. 5871

San Antonio VA Office, Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054, (713) 660–4120

San Antonio National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

San Antonio National Cemetery Area Office (Fort Sam Houston), Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, (512) 696–9660 ext. 5871

Fiscal Officer, Temple Medical Center, Temple, TX 76504, (817) 778–4811

Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710, (817) 756–6454

Jurisdiction over all counties in Texas not listed under the Houston Regional Office.

Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Waco Outpatient Clinic. Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752–6581

Utah

Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, UT 84147, (801) 524–5361

Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, UT 85148, (810) 584–1213

Vermont

Fiscal Officer, White River Junction, Medical and Regional Office Center, White River Junction, VT 05001, (802) 295–9363 ext. 1034

Virginia

Alexandria National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Culpeper National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Danville National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982–2463

Hopewell National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Leesburg National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Mechanicsville National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (807) 722–9961

Hampton National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (807) 722–9961

Quantico National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW., Washington, DC 20422, (202) 745–8228

Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Richmond National Cemetery Area Office. Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 230–1304

Fiscal Officer, Roanoke Regional Office, 210 Franklin Road, SW., Roanoke, VA 24011, (703) 982–6116

Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, DC Regional Office.

Fiscal Officer, Salem Medical Center, Salem, VA 24153, (703) 982–2463

Sandston National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231–9011 ext. 205

Staunton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135, (703) 982–2463

Winchester National Cemetery Area Office, Send to: Fiscal Officer,VA Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493, (206) 582–8440 ext 6049

Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98714, (206) 442–5025

Fiscal Officer, Seattle Medical Center, 1160 S. Columbian Way, Seattle, WA 98108, (206) 762–1010 ext. 2666

Seattle Outpatient Clinic, Send to: Fiscal Officer, VA Medical Center, 1660 S. Columbia Way, Seattle, WA 98108, (206) 762–1010 ext. 2666

Fiscal Officer, Spokane Medical Center—North, 4815 Assembly Street, Spokane, WA 99205, (509) 327–0283 ext. 286

Vancouver Medical Center, Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97207, (503) 220–8262 ext. 6948

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801, (304) 255–2121 ext. 4174

Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 3389

Grafton National Cemetery Area Office, Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301, (304) 623–3461 ext. 3389

Fiscal Officer, Huntington Regional Office, 640 4th Avenue, Huntington, WV 25701, (304) 529–5477

Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.

Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704, (304) 429–6741 ext. 2422

Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401, (304) 263–0811 ext. 3176

Wheeling Outpatient Clinic Substation, Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240, (412) 683–7675

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705, (608) 262–7050

Fiscal Officer, Milwaukee (Wood) Regional Office, P.O. Box 6, Wood, WI 53193, (414) 671–8121

Fiscal Officer, Tomah Medical Center, Tomah, WI 54660, (608) 372–1786 ext. 3971

Fiscal Officer, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591

Wood National Cemetery Area Office, Send to: Fiscal Office, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, (414) 384–2000 ext. 2591

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001, (307) 778–7550 ext. 7263

Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801, (307) 672–3473

II. AGENCIES

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Agency for International Development

For employees of the Agency for International Development and the Trade and Development Program:

Assistant General Counsel for Employee and Public Affairs (GC/EPA), Agency for International Development, 22nd and C Streets, NW., Room 6892, Washington, DC 20523–0076, (202) 647–8218

Central Intelligence Agency

Office of Personnel, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 874–2268

Commission on Civil Rights

Solicitor, Commission on Civil Rights, 624 9th Street, NW., Suite 632, Washington, DC 20425, (202) 376–8351

Commodity Futures Trading Commission

Director, Office of Budget and Fiscal Operations, 2033 K Street, NW., Washington, DC 20581, (202) 254–3354

Consumer Product Safety Commission

General Counsel, 5401 Westbard Avenue, Room 200, Washington, DC 20207, (301) 504–0980

Export-Import Bank of the United States

General Counsel, Export-Import Bank of the United States, Room 947, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8334

Equal Employment Opportunity Commission

Director, Financial Management Division, United States Equal Employment Opportunity Commission, 1801 L Street, NW., Room 2002, Washington, DC 20507, (202) 663–4224

Farm Credit Administration

Chief, Fiscal Management Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4122

Federal Deposit Insurance Corporation

Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–3686

Federal Election Commission

Accounting Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376–5270

Federal Emergency Management Agency

Office of General Counsel, General Law Division, 500 C Street, SW., Washington, DC 20472, (202) 646–4105

Federal Labor Relations Authority

Director of Personnel, Federal Labor Relations Authority, 607 14th Street, NW., Suite 430, Washington, DC 20424, (202) 482–6690

Federal Maritime Commission

Director of Personnel or Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5773

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, (202) 653–5305

Federal Retirement Thrift Investment Board

Payments to Board employees:

Director of Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1670

Benefits from the Thrift Savings Fund:

General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, (202) 942–1662

General Services Administration

1. Region 1 (Maine, Vermont, New Hampshire, Massachusetts, Connecticut):

Regional Counsel, 10 Causeway Street, Boston, MA 02222, (617) 835–5896

2. Region 2 (New York, New Jersey, Puerto Rico, the Virgin Islands):

Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264–8306

3. Region 3 (Pennsylvania, West Virginia, Maryland, Virginia, less the greater metropolitan area of Washington, DC):

Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597–1319

4. Region 4 (Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida):

Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, SW., Atlanta, GA 30303, (404) 242–0915

5. Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):

Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5392

6. Region 6 (Nebraska, Iowa, Kansas, Missouri):

Regional Counsel, 1500 E Bannister Road, Kansas City, MO 64131, (816) 926–7212

7. Region 7 (New Mexico, Texas, Oklahoma, Arkansas, Louisiana):

Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334–2325

8. Region 8 (Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado):

Regional Counsel, Building 41, Denver Federal Center, Denver, CO 80225, (303) 776–7352

9. Region 9 (California, Nevada, Arizona, Hawaii, Guam):

Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 454–9309

10. Region 10 (Washington, Oregon, Idaho, Alaska):

Regional Counsel, GSA Center, Auburn, WA 98002, (206) 396–7007

11. Greater Metropolitan Area of Washington, DC (includes parts of Maryland and Virginia):

Regional Counsel, 7th & D Streets, NW., Washington, DC 20547, (202) 472–1809

Interstate Commerce Commission

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423, (202) 927–5827

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–5805

National Aeronautics and Space Administration

NASA Headquarters

Associate General Counsel (General) Attention: SN Code GG, NASA Headquarters, 400 Maryland Avenue, SW., Washington, DC 20546, (202) 453–2465

NASA Field Installations

Chief Counsel, Ames Research Center (including Dryden Flight Research Center), Moffett Field, CA 94035, (415) 694–5103

Chief Counsel, Goddard Space Flight Center (including Wallops Flight Center), Greenbelt, MD 20771, (301) 286–9181

Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483–3021

Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (407) 867–2550

Chief Counsel, Langley Research Center, Hampton, VA 23665, (804) 865–3397

Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433–2318

Chief Counsel, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812, (205) 544–0012

Chief Counsel, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, (601) 688–2164

National Archives and Records Administration

General Counsel (NSL), room 305, Archives Building, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Washington, DC 20408, (202) 501–5535

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170

National Credit Union Administration

Director, Division of Personnel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456, (202) 357–1156

National Endowment for the Arts

General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 522, Washington, DC 20506, (202) 682–5418

National Endowment for the Humanities

General Counsel,
National Endowment for the Humanities, Room 530, Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0322

National Labor Relations Board

Finance Officer, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Room 1300, Washington, DC 20570, (202) 254–9307

National Mediation Board

Administrative Officer, National Mediation Board, 1301 K Street, NW., Suite 250 East, Washington, DC 20572, (202) 523–5950

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 175 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7300

National Science Foundation

General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (202) 634–4266

National Transportation Safety Board

Director, Personnel and Training Division, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, ATTN: AD–30, (202) 382–6718

Navajo and Hopi Indian Relocation Commission

Attorney, Navajo and Hopi Indian Relocation Commission, 201 East Birch, Room 11, P.O. Box KK, Flagstaff, AZ 86002, (602) 779–2721

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4750

Office of Personnel Management

Payments to OPM employees:

General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–1980

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System:

Associate Director for Retirement and Insurance, Office of Personnel Management, Court Order Benefit Section, P.O. Box 17, Washington, DC 20044, (202) 606–0218

Overseas Private investment Corporation

Director of Personnel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527, (202) 457–7082

Panama Canal Commission

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011, 52–3519

Pension Benefit Guaranty Corporation

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, (202) 778–8820

Railroad Retirement Board

Deputy General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4935

Securities and Exchange Commission

Branch Chief, Fiscal Operations, Office of the Comptroller, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2049

Selective Service System

General Counsel, Selective Service System, 1023 31st Street, NW., Washington, DC 20435, (202) 724–1167

Small Business Administration

[District Directors are designated to accept legal process for their respective districts as set forth in 13 C.F.R. 101.3–1.]

District Director,Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205, (205) 254–1344

District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022

District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611

District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201, (501) 378–5871

District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688–2956

District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 291–5440

District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490

District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607

District Director, Hartford District Office, One Financial Plaza, Hartford, CT 06106, (203) 244–3600

District Director, Washington District Office, 1030 15th Street, NW., Washington, DC 20417, (202) 655–4000

District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202, (904) 791–3782

District Director, Miami District Office, 222 Ponce De Leon Blvd., Coral Gables, FL 33134, (305) 350–5521

District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309, (404) 347–2441

District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546–8950

District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096

District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4433

District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604, (312) 353–4528

District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204, (317) 269–7272

District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571

District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201,

District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113, (504) 589–6685

District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171

District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204, (301) 862–4392

District Director, Boston District Office, 150 Causeway Street, Boston, MS 02114, (617) 223–2100

District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 48116, (313) 226–6075

District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402, (612) 725–2362

District Director, Jackson District Office, 100 West Capitol Street, Jackson, MS 39201, (601) 969–4371

District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106, (816) 374–3416

District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191

District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381

District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102, (404) 221–4691

District Director, Las Vegas District Office, 301 East Stewart, Las Vegas, NV 89101, (702) 385–6611

District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041

District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102, (201) 645–2434

District Director, Albuquerque District Office, 5000 Marble Avenue, NE., Albuquerque, NM 87110, (505) 766–3430

District Director, New York District Office, 26 Federal Plaza, New York, NY 10007, (212) 264–4355

District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260, (315) 423–5383

District Director, Charlotte District Office, 230 South Tryon Street, Charlotte, NC 28202, (704) 371–6111

District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108, (701) 237–5771

District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, SD 57102, (605) 336–2980

District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199, (216) 522–4180

District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215, (614) 469–6860

District Director, Oklahoma City District Office, 200 NW. 5th Street, Oklahoma City, OK 73102, (405) 231–4301

District Director, Portland District Office, 1220 SW. Third Avenue, Portland, OR 97204, (503) 221–2682

District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004, (215) 597–3311

District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222, (412) 644–2780

District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918, (809) 753–4572

District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903, (401) 528–4580

District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201, (803) 765–5376

District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219, (615) 251–5881

District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242, (214) 767–0605

District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002, (713) 226–4341

District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550, (512) 423–4534

District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401, (806) 762–7466

District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206, (512) 229–6250

District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800

District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602, (802) 229–0538

District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240, (804) 782–2617

District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534

District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310

District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301, (304) 623–5631

District Director, Madison District Office, 212 East Washington Avenue, Madison, WI 53703, (608) 264–5261

District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266

Tennessee Valley Authority

Payments to TVA employees:

Chairman, Board of Directors, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–2101

Payments of retirement benefits under the TVA Retirement System:

Chairman, Board of Directors, TVA Retirement System, 500 West Summit Hill Drive, Knoxville, TN 37902, (615) 632–0202

United States Information Agency

Counsel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–7976

United States Soldiers' & Airmen's Home

Chief, Employee Management Branch, United States Soldiers' and Airmen's Home, Box 1200, 3700 North Capitol Street, NW., Washington, DC 20317, (202) 722–3425

III. The United States Postal Service and the Postal Rate Commission

United States Postal Service

Service of process may be made on the postmaster or head of the installation where the employee obligor works. However, if the installation where the employee obligor works cannot be determined, service of process may be made on the appropriate Chief Field counsel. The geographic areas served by the Chief Field Counsels and their addresses are as follows:

Chief Field Counsel, Northeast Region, U.S. Postal Service, 6 Griffin Park Road North, Windsor, CT 10098–0120, (203) 285–7127

Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070–079 and 085–089), New York, and the Caribbean Islands.

Chief Field Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19187–0120, (215) 496–6011

Serving: The District of Columbia, Delaware, Kentucky, Ohio, Maryland, Pennsylvania, Virginia, West Virginia southern New Jersey (ZIP codes beginning with 080–084), North Carolina and South Carolina (ZIP codes beginning with 290–292).

Chief Field Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166–1710, (901) 722–7350

Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina (ZIP codes beginning with 298–299), Tennessee and Texas.

Chief Field Counsel, Central Region, U.S. Postal Service, 300 South Riverside Street, Chicago, IL 60606–1710, (212) 765–5264

Serving: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Colorado and Wyoming.

Chief Field Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099–0170, (415) 742–4810

Serving: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and the Pacific Islands including the Trust Territory.

Processing of legal process in garnishment actions will be substantially expedited by serving the postmaster or installation head rather than the Chief Field Counsel.

Postal Rate Commission

Chief Administrative Officer, Postal Rate Commission, 2000 L Street, NW., Washington, DC 20268, (202) 254–3880

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue, NW., Washington, DC 20004, (202) 727–6979

American Samoa

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633–4155

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472–6841 (Country Code 671)

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801, (809) 774–1163

V. Instrumentality

Smithsonian Institution

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive, SW., Washington, DC 20560, (202) 381–5866

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017, (212) 490–9000

[FR Doc. 93–15390 Filed 7–1–93; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–89–AD; Amdt. 39–8616; AD 93–13–03]

Airworthiness Directives; British Aerospace (Commercial Aircraft), Limited, Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace (Commercial Aircraft), Limited, Model ATP series airplanes. This action requires a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. This amendment is prompted by a report that an engine fire extinguisher bottle cartridge failed to fire. The actions specified in this AD are intended to prevent operational failure of the fire extinguisher systems for the left- and right-hand engines.

DATES: Effective July 19, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace (Commercial Aircraft), Limited, Model ATP series airplanes. The CAA advises that a report has been received of operational failure of an engine fire extinguisher bottle cartridge on a Model ATP series airplane. When the flight crew attempted to fire the extinguisher system, the cartridge failed to release the extinguishant. Subsequent investigations by the manufacturer revealed that both the cartridge and the firing circuit were serviceable. The suspected origin of this problem has been traced to a lack of electrical conductivity between the fire extinguisher bottle cartridge connector and the cartridge, which originated during manufacture of the connector assembly. This condition, if not corrected, could result in operational failure of the fire extinguisher systems for the left- and right-hand engines.

Jetstream Aircraft, Ltd., has issued Service Bulletin ATP–26–9, dated May 12, 1993, that describes procedures for a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. ("Out-of-tolerance" is defined as having an electrical resistance reading of less than 5.5 ohms or greater than 7 ohms.) The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent operational failure of the fire extinguisher systems for the left- and right-hand engines. This AD requires a one-time safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the engine fire extinguisher bottles in the left- and right-hand engines; and, if out-of-tolerance electrical resistance is detected, a full electrical inspection of the engine fire extinguisher systems, a safety ohmmeter reinspection, and replacement of cartridge firing units and/or cartridge connectors, as necessary. Additionally, operators are required to submit a report to Jetstream Aircraft, Ltd., of the results of any inspection findings. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–89–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–13–03 British Aerospace (Commercial Aircraft), Limited: Amendment 39–8616. Docket 93–NM–89–AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2055, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent operational failure of the fire extinguisher systems for the left- and right-hand engines, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a safety ohmmeter inspection to verify the electrical conductivity of the firing circuits at the cartridge connectors of the fire extinguisher bottles of the left- and right-hand engines in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP–26–9, dated May 12, 1993.

(1) If an out-of-tolerance condition is not detected: No further action is required by this paragraph.

Note: An "out-of-tolerance condition" is defined as having an electrical resistance reading of less than 5.5 ohms or greater than 7 ohms.

(2) If an out-of-tolerance condition is detected: Prior to further flight, perform a full electrical inspection of the fire extinguisher systems of the left- and right-hand engines and repeat the safety ohmmeter inspection in accordance with the service bulletin.

(i) If an out-of-tolerance condition is no longer detected: No further action is required by this paragraph.

(ii) If an out-of-tolerance condition is still detected: Prior to further flight, replace the cartridge firing unit with a new or serviceable cartridge firing unit and/or replace the cartridge connector with a new or serviceable cartridge connector in accordance with the service bulletin.

(b) Within 10 days after accomplishing the inspection(s) required by paragraph (a) of this AD, submit a report of any inspection findings, to Jetstream Aircraft, Ltd., in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP–26–9, dated May 12, 1993. Report all findings, including nil defects, to: Service Support Manager, Customer Support Department, Jetstream Aircraft, Ltd., Woodford Aerodrome, Chester Road, Cheshire SK7 1QR, England. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with Jetstream Aircraft, Ltd., Service Bulletin ATP–26–9, dated May 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 19, 1993.

Issued in Renton, Washington, on June 25, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15705 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 93–45]

Changes to Customs List of Designated Public International Organizations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating Customs list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act. The last time the list was updated was in 1985 and since then the President has issued several Executive Orders which designate or redesignate certain organizations as entitled to this free entry privilege. Accordingly, Customs deems it appropriate to update the list at this time.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Alice Hopkins, Office of International Affairs (202) 927–2231 (for Operational matters), or Anthony L. Shurn, Entry Rulings Branch (202) 482–7040 (for legal matters).

SUPPLEMENTARY INFORMATION:

Background

The International Organizations Immunities Act, 22 U.S.C. 288, generally provides that certain international organizations, agencies, and committees, those in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of section 288. There are currently 62 organizations, agencies, and committees on the Department of State's list of public international organizations.

One of the privileges provided for under the Act is that the baggage and effects of alien officers, employees, and representatives—and their families, suites, and servants—to the designated organization, are admitted free of duty and without entry. Those designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the international organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

Since the last revision of § 148.87(b) in 1985 (T.D. 85–123), many Executive Orders have been issued designating—and redesignating—certain organizations as public international organizations. Collectively, these Executive Orders result in the net addition of 12 international organizations to Customs list of public

international organizations entitled to the duty-free entry privilege—bringing the total of designated international organizations to 61, as follows:

1. Executive Order 10727 of August 31, 1957, 22 FR 7099, 3 CFR parts 1954–1958 Comp. p. 386, designated the Preparatory Commission of the International Atomic Energy Agency;

2. Executive Order 12467 of March 2, 1984, 49 FR 8229, 3 CFR part 1984 Comp. p. 166, 20 Weekly Comp. Pres. Doc. 292, designated the International Boundary and Water Commission, United States and Mexico;

3. Executive Order 12508 of March 22, 1985, 50 FR 11837, 3 CFR part 1985 Comp. p. 337, 21 Weekly Comp. Pres. Doc. 351, designated the World Tourism Organization;

4. Executive Order 12567 of October 2, 1986, 51 FR 35495, 3 CFR part 1986 Comp. p. 232, 22 Weekly Comp. Pres. Doc. 1320, designated the Inter-American Investment Corporation, the Commission for the Study of Alternatives to the Panama Canal, and the Pacific Salmon Commission;

5. Executive Order 12628 of March 8, 1988, 53 FR 7725, 3 CFR part 1988 Comp. p. 553, 24 Weekly Comp. Pres. Doc. 312, designated the United Nations Industrial Development Organization;

6. Executive Order 12643 of June 23, 1988, 53 FR 24247, 3 CFR part 1988 Comp. p. 575, 24 Weekly Comp. Pres. Doc. 856, designated the International Committee of the Red Cross;

7. Executive Order 12647 of August 2, 1988, 53 FR 29323, 3 CFR part 1988 Comp. p. 578, 24 Weekly Comp. Pres. Doc. 992, designated the Multilateral Investment Guarantee Agency;

8. Executive Order 12669 of February 20, 1989, 54 FR 7753, 3 CFR part 1989 Comp. p. 212, 25 Weekly Comp. Pres. Doc. 217, designated the Organization of Eastern Caribbean States;

9. Executive Order 12732 of October 31, 1990, 55 FR 46489, 3 CFR part 1990 Comp. p. 311, 26 Weekly Comp. Pres. Doc. 1712, designated the International Fund for Agricultural Development;

10. Executive Order 12766 of June 18, 1991, 56 FR 28463, 3 CFR part 1991 Comp. p. 333, 27 Weekly Comp. Pres. Doc. 810, designated the European Bank for Reconstruction and Development and amended Executive Order 11760 of January 11, 1974, by striking out the reference to the European Space Research Organization (ESRO) and inserting in its place the European Space Agency;

11. As Executive Order 10533 of June 3, 1954, 19 FR 3289, 3 CFR parts 1954–1958 Comp. p. 194, designated the Organization of American States as including the former Pan American Union—thereby, superseding the previous Executive Order 9698 of February 19, 1946, which initially designated the Pan American Union, the separate reference to the Pan American Union is deleted and parenthetically referenced following the Organization of American States.

Lastly, Executive Order 12425 of June 16, 1983, 48 FR 28069, 3 CFR parts 1983 Comp. p. 193, 19 Weekly Comp. Pres. Doc. 885, designated the International Criminal Police Organization (INTERPOL), with limited privileges: The privilege of duty-free entry, however, was not extended to the organization. Accordingly, although Customs notes the execution of this Executive Order, the subject organization (INTERPOL) is not included on Customs list as entitled to duty-free entry privileges; however, it is carried on the Department of State's list.

This document also corrects some editorial errors, *i.e.*, that incorrectly reference an international organization, thus, the reference to the Organization for Economic Cooperation should read the Organization for European Economic Cooperation and the date of the Executive Order designating the International Maritime Satellite Organization should read September 12, 1980, not April 22, 1980, and adds section 1498, 19 U.S.C. 1498, which relates to entry under regulations, as a general statutory basis for part 148, in addition to section 1496, 19 U.S.C. 1496, which relates to the examination of baggage.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely corrects the listing of designated organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch. Personnel from other offices, however, participated in its development.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

Amendment to the Regulations

For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

2. Section 148.87(b) is amended by removing the entries "European Space Research Organization (ESRO)" and "11760" and "Jan. 17, 1974" and "Pan American Union" and "10533" and "June 3, 1954" from the table and adding the following, in appropriate alphabetical order, to the table, to read as follows:

§ 148.87 Officers and employees of, and representatives to, public international organizations.

* * * * *

(b)* * *

Organization	Executive order	Date
* * * * * * *		
Commission for the Study of Alternatives to the Panama Canal	12567	Oct. 2, 1986.

Organization	Executive order	Date
* * * * * * *		
European Bank for Reconstruction and Development	12766	June 18, 1991.
European Space Agency (formerly the European Space Research Organization (ESRO))	12766	June 18, 1991.
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Inter-American Investment Corporation	12567	Oct. 2, 1986.
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International Boundary and Water Commission, United States & Mexico	12467	Mar. 2, 1984.
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International Committee of the Red Cross	12643	June 23, 1988.
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International Fund for Agricultural Development	12732	Oct. 31, 1990.
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Multilateral Investment Guarantee Agency	12647	Aug. 2, 1988.
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Organization of Eastern Caribbean States	12669	Feb. 20, 1989.
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Pacific Salmon Commission	12567	Oct. 2, 1986.
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Preparatory Commission of the International Atomic Energy Agency	10727	Aug. 31, 1957.
* * * * * * *		
United Nations Industrial Development Organization	12628	Mar. 9, 1988.
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World Tourism Organization	12508	Mar. 22, 1985.

3. In addition to the amendments set forth above, in § 148.87(b) remove the words "Organization for Economic Cooperation (now known as the Organization for Economic Cooperation and Development)" and add, in their place, the words "Organization for Economic Cooperation and Development [formerly Organization for European Economic Cooperation]".

4. In addition to the amendments set forth above, in § 148.87(b) revise the date for the entry "International Maritime Satellite Organization", which reads "April 22, 1980", to read "September 12, 1980".

Approved: June 11, 1993.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–15489 Filed 7–1–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 126

[Public Notice 1826]

Angola; Removal of the Domestic Arms

AGENCY: U.S. Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic In Arms Regulations (ITAR) (22 CFR parts 120–130) to reflect the removal of the domestic arms embargo on Angola.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Rogers, Office of Defense Trade Policy, Bureau of Politico-Military Affairs, U.S. Department of State. Phone: (202) 647–4231.

SUPPLEMENTARY INFORMATION: The Department of State has terminated the domestic arms embargo against Angola. Section 126.1(a) of the ITAR is being amended to reflect this change in policy with respect to the commercial export of defense articles and services to Angola. Effective immediately, it is the policy of the U.S. Government to review all licenses and approvals authorizing the export or other transfer of defense articles or defense services to Angola on a case-by-case basis, with a presumption of denial for lethal articles. Approvals for export of defense articles or defense services bound for Angola will be considered for non-lethal defense articles or services.

For the purposes of this policy, "nonlethal defense articles" means an article that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death (See, *e.g.*, 10 U.S.C. 2547).

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Accordingly, for the reasons set forth in the preamble, and under the authority of the Arms Export Control Act and 22 U.S.C. 2778, the State

Department is adopting the following amendment to 22 CFR 126.1(a).

PART 126—[AMENDED]

1. The authority for part 126 continues to read as follows:

Authority: Sec. 38, sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778, 2780); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658, unless otherwise noted.

2. Section 126.1(a) is revised to read as follows:

§126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

* * * * *

For the Department of State.

Dated: June 24, 1993.

Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–15746 Filed 7–1–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–342; RE: Notice Nos. 729, 738, and 756]

RIN 1512–AA07

The Rutherford Viticultural Area [89F–90P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Rutherford." The petition for establishing this viticultural area was submitted by the Rutherford and Oakville Appellation Committee which is composed of seven wineries and seven grape growers within the Rutherford and Oakville areas of Napa County, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Rulemaking Proceeding

Petition

On March 8, 1989, the Rutherford and Oakville Appellation Committee petitioned ATF for establishment of a viticultural area in Napa County, California, to be known as "Rutherford." The viticultural area proposed by the petitioners is located in the central portion of the Napa Valley approximately 12 miles northwest of the city of Napa. In general terms, the proposed area extended as far north as Zinfandel Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as Skellenger Lane with the exception of one area extending approximately .5 mile south of Skellenger Lane. The proposed area contains approximately 31 bonded wineries and consists of about 6,650 total acres, most of which are densely planted to vineyards.

Notice of Proposed Rulemaking

In response to the petition, ATF published Notice No. 729 in the **Federal Register** on September 17, 1991 (56 FR 47044), proposing establishment of the Rutherford viticultural area. The notice detailed the boundaries as proposed in the petition, with some minor modifications, and requested comments from all interested persons. Written comments were to be received on or before November 18, 1991.

Comments to Notice of Proposed Rulemaking

ATF received 17 comments in response to the notice of proposed rulemaking. Nine commenters disagreed with the northern boundary of Rutherford. These commenters felt that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line of St. Helena. One commenter disagreed with the northeastern boundary of Rutherford. This commenter felt that the northeastern boundary should continue to be the 500-foot contour line (which would include an area designated on the pertinent U.S.G.S. map as Spring Valley) rather than changing to the 380-

foot contour line which would exclude the Spring Valley area. Two commenters disagreed with the southern boundary of Rutherford and stated that it should extend further south to include Beaulieu Vineyard properties No. 2 and No. 4. According to these two commenters, Beaulieu Vineyard properties No. 2 and No. 4 have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, both of which have contributed greatly to the development and consumer recognition of the Rutherford name. And finally, one commenter stated he was against any further subdivision of the Napa Valley.

Based on the controversial nature of the comments received, ATF decided to reopen the comment period for an additional 90 days in order to obtain more information on the establishment of the Rutherford viticultural area, its proposed boundaries, and other possible boundaries. Reopening Notice

On April 22, 1992, ATF published Notice No. 738 (57 FR 14681) reopening the comment period on both the proposed Rutherford viticultural area and the directly adjacent Oakville viticultural area. ATF specifically requested comments on 11 questions which were asked in this reopening notice which mostly pertained to possible boundary changes. Interested persons were given until July 21, 1992, to submit their comments.

Comments to Reopening Notice

ATF received 62 comments in response to the reopening notice. Twenty-five commenters disagreed with the proposed northern boundary of Rutherford. These commenters felt that the Rutherford boundary should extend further north either to Sulphur Creek or to the southern city limits line of St. Helena. One of these commenters submitted geographical information in support of his position that there is little or no difference in the geographical features of the area between Zinfandel Lane and Sulphur Creek as compared to the proposed Rutherford viticultural area. Ten commenters, on the other hand, agreed with the proposed northern boundary of Rutherford and stated that there is no historical or current evidence which would suggest that the area north of Zinfandel Lane has ever been considered to be within the Rutherford area.

One commenter disagreed with the northeastern boundary of Rutherford. This commenter felt that the northeastern boundary should continue to be the 500-foot contour line (which would include the Spring Valley area) rather than changing to the 380-foot contour line which would exclude the Spring Valley area.

One commenter disagreed with the northwestern boundary of Rutherford. This commenter felt that the Rutherford boundary should be extended along the northern fork of Bale Slough approximately 2,750 feet north of Zinfandel Lane to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, then following that line to the west to the 500-foot contour line.

Two commenters disagreed with the eastern boundary of Rutherford. These two commenters stated that the eastern boundary of Rutherford should be extended beyond the currently proposed 500-foot elevation line to the 1200-foot elevation line to include the area south of Lake Hennessey known as Pritchard Hill.

Five commenters, plus petitions containing the names of 56 additional interested persons within the Napa Valley, disagreed with the southern boundary of Rutherford. These commenters and petitioners felt that any boundaries for Rutherford must include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and have contributed greatly to the development and consumer recognition of the Rutherford name. These two Beaulieu Vineyard properties were at that time located within the proposed Oakville viticultural area directly south of the proposed Rutherford viticultural area.

Six commenters stated that they agreed with the originally proposed southern boundary of Rutherford and did not feel that it should be changed to include Beaulieu Vineyard properties No. 2 and No. 4. These commenters stated that these two vineyard properties were located in the Oakville area and referred to the information submitted in the original Rutherford and Oakville petitions as evidence for their position.

Hearing Notice

As a result of the large number of comments received to the reopening notice and to the conflicting nature of the information contained in those comments, ATF determined that a public hearing was necessary and would serve the public interest. Consequently, on October 2, 1992, ATF published Notice No. 756 (57 FR 45588) which announced the time and place of a public hearing to be held by ATF concerning the establishment of the Rutherford viticultural area. The notice stated that the hearing would be held in Napa, California, on December 9, 1992, and requested that all interested persons who wished to testify at the hearing submit a letter notifying ATF of their intent to comment on or before November 9, 1992. The notice also stated that interested persons could continue to submit written comments on this matter until December 28, 1992.

Public Hearing

A public hearing was held on December 9, 1992, in Napa, California, for the purpose of gathering additional information and to receive evidence with respect to the establishment of the Rutherford viticultural area, the proposed boundaries, and other possible boundaries. Twenty persons testified at the public hearing.

Controversial Boundaries

As a result of the hearing testimony and the large number of written comments received concerning the establishment of the Rutherford viticultural area, ATF has determined that there are five boundary disputes that need to be resolved. These disputes involve the northern, northwestern, northeastern, eastern and southwestern boundaries of Rutherford. We will address the evidence presented by the different parties for each boundary dispute and then give our final decision as to where the boundaries of the Rutherford viticultural area are located and why.

1. Northern Boundary of Rutherford. Mr. W. Andrew Beckstoffer of Beckstoffer Vineyards, Mr. David I. Freed, President of the UCC Vineyards Group, and numerous vineyard owners located between Zinfandel Lane and Sulphur Creek want the proposed northern boundary of Rutherford extended further north. Mr. Beckstoffer and many of the other vineyard owners between Zinfandel Lane and Sulphur Creek want the boundary extended to Sulphur Creek which is within the city limits of St. Helena. Mr. Freed states that if it is not feasible to extend the boundary inside the city limits of St. Helena, then he feels the boundary should extend to the southern city limits line of St. Helena. The proponents of this northward extension state that Zinfandel Lane is not a natural geographical boundary separating the proposed Rutherford viticultural area from the St. Helena area but rather a man-made road which has no geographical significance.

As support for his position, Mr. Beckstoffer submitted a report titled "Letter-Report, Hydrogeologic Evaluation of St. Helena-Rutherford Area" prepared by Mr. Richard C. Slade,

consulting groundwater geologist. Mr. Slade's report concludes that generally, climatic, topographic, and geologic characteristics across the study area, from St. Helena to Rutherford, are similar. The report states that the alluvial sediments along the southwestern border of the Napa Valley in this area and emanating from the mountains to the west, are generally composed of material consisting of Sonoma Volcanics and Franciscan assemblage rocks. The report states that the Sulphur Creek drainage is the major influence on alluvial sediments across the entire project site. In addition, the report states that the predominant mineralogic composition of alluvial fans underlying the site appears to be derived from Franciscan assemblage shale, sandstone, and greenstone bodies, along with Sonoma Volcanics. The report further states that there appear to be some differences in the mineralogic composition of alluvial sediments in the area of Bale Slough compared to the region north of Zinfandel Lane and extending to Sulphur Creek.

Mr. Beckstoffer also states that the Soil Survey of Napa County, California, prepared by the United States Department of Agriculture Soil Conservation Service, shows that Zinfandel Lane is surrounded by a "lake" of Pleasanton soil with no distinction between the area immediately north and immediately south of the county road. The Soil Survey map designates the entire area as 170 which is defined as Pleasanton loam, 0 to 2 percent slopes.

In a letter dated December 22, 1992, Mr. Beckstoffer also refers to a letter from Mr. Slade, dated December 23, 1992, which states that in Mr. Slade's professional opinion the Sulphur Creek alluvial fan extends approximately 1 mile south of Zinfandel Lane. Mr. Slade also states that the Sulphur Creek alluvial fan appears to be much larger than the Bear Creek alluvial fan. Mr. Slade states that based on his examination of current topographic maps for the area, the Sulphur Creek alluvial fan covers an area of approximately 5 square miles east of the mountain front. The Bear Creek alluvial fan, on the other hand, covers an area of approximately 2½ square miles. Therefore, according to Mr. Slade, the Sulphur Creek alluvial fan is about twice as large as the Bear Creek alluvial fan. Further, the watershed area drained by Sulphur Creek within the hills west of the valley is approximately three times as large as the watershed area drained by Bear Creek. Mr. Slade states that his examination of published geologic maps for the area show that Franciscan formation rocks comprise the highland area west of the Sulphur and Bear Creek areas. Therefore, according to Mr. Slade, both watershed areas drain geologic terrain consisting of similar rocks, in gross chemical and physical composition.

Mr. Slade states that as a result of his examination, there appears to be little difference in the gross physical and chemical character of the sediments of the Sulphur Creek alluvial fan, compared to the Bear Creek alluvial fan. Therefore, according to Mr. Slade, it is reasonable to extend the northern boundary of the Rutherford viticultural area northward to Sulphur Creek.

After reviewing Mr. Slade's letter of December 23, 1992, Mr. Beckstoffer concludes that Franciscan sedimentary materials can be the same formation whether delivered down Sulphur Canyon (west of St. Helena) or Bear Canyon (west of Rutherford). Consequently, according to Mr. Beckstoffer, the geologic formation in the Rutherford area is similar (Franciscan) even though delivered by two different slides (canyons).

Mr. Beckstoffer states that since Zinfandel Lane is not a natural geological boundary, he feels that the northern boundary of Rutherford should be extended north until the first natural geological feature is observed. According to Mr. Beckstoffer, this natural geological feature would be Sulphur Creek which runs through the city limits of St. Helena and is about 1.85 miles north of Zinfandel Lane.

Mr. Beckstoffer also states that much of the grapes grown between Zinfandel Lane and Sulphur Creek have Rutherford character and are sold to wineries, particularly Rutherford wineries, because of this Rutherford character. He feels that this area should be included within the Rutherford viticultural area due to this Rutherford character and to the long historical use of these grapes by Rutherford wineries.

Mr. David I. Freed also disapproves of using Zinfandel Lane as the northern boundary of the Rutherford viticultural area. Mr. Freed states that if Sulphur Creek is not acceptable as a northern boundary of Rutherford due to its being located within the city limits of St. Helena then he feels the northern boundary should be the southern city limits line of St. Helena. Mr. Freed states that there are no climatic differences which can be distinguished by Zinfandel Lane. He states that to the contrary, the changes in climate are imperceptible. In addition, he states that there are no soil differences which can be distinguished at Zinfandel Lane. To the contrary, Mr. Freed states that the "lake" of Pleasanton soil in the middle of the valley floor on the map presented by Mr. Beckstoffer shows an equal area of the same type of soil (Pleasanton) lying to the north as well as to the south of Zinfandel Lane. Furthermore, according to Mr. Freed, there are no distinguishing geographical features existing at Zinfandel Lane other than the existence of a county road. Mr. Freed states that vineyards lying between Zinfandel Lane and the southern city limits boundary of St. Helena are in Napa County as are all of the properties in the proposed Rutherford area. Furthermore, all zoning, vineyard regulation, taxation and all other governmental matters are controlled by the Board of Supervisors of Napa County, not the city of St. Helena. Mr. Freed states that if the southern city limits line of St. Helena is not adopted as the northern boundary of Rutherford for some reason, then consideration should at least be given to Inglewood Avenue and Chaix Lane as being more accurate, even though somewhat less expedient, than Zinfandel Lane. Mr. Freed indicates that the Inglewood Avenue/Chaix Lane boundary would avoid creating a "no man's land" that would separate grape suppliers from their historical winery connections.

Mr. Richard Mendelson, lawyer for the Rutherford and Oakville Appellation Committee, states in both public testimony and in written comments that the northern boundary of the Rutherford viticultural area should remain at Zinfandel Lane. In support of this position, Mr. Mendelson states that historical and modern community perceptions show that the area north of Zinfandel Lane, except for possibly the historical Rennie property on the extreme western side of the valley, has never been known by the name of Rutherford. Mr. Mendelson submitted various historical and current maps of the area which, according to Mr. Mendelson, show that the area north of Zinfandel Lane has always been considered to be part of the greater St. Helena area.

Ms. Deborah L. Elliott-Fisk, Associate Professor of Geography, University of California at Davis, who represents the Rutherford and Oakville Appellation Committee, states that the map shown by Mr. Beckstoffer at the public hearing, which depicted the extent of the Sulphur Canyon Fan which issues from Sulphur Canyon immediately west of the town of St. Helena, is incorrect. Ms. Elliott-Fisk bases this statement on her research over the last 5½ years which includes sampling over 95 trenches and numerous hand-dug pits and exposures

in the proposed Rutherford viticultural area, the St. Helena region, and the drainage basins that feed the fans and Bale Slough in this section of Napa Valley. Ms. Elliott-Fisk states that her statement is also based on her review of all published materials on the geology of this region. According to Ms. Elliott-Fisk, Sulphur Canyon Fan extends only a little way south of Zinfandel Lane into the northern part of the proposed Rutherford area.

Ms. Elliott-Fisk states that the research report done by Mr. Slade for Mr. Beckstoffer was done for the region north of Zinfandel Lane and west of Highway 29 only, and was based on a 1950s report on groundwater in Napa and Sonoma Counties, on a set of preliminary geologic maps at a scale of 1:62,500 produced by Fox et al. (1973), and with one day of field reconnaissance. Ms. Elliott-Fisk states that, as she mentioned at the December 9 and 10, 1992, public hearings, these maps are inaccurate. Ms. Elliott-Fisk states that Mr. Slade indicates in his report that "alluvial fans emanating from Sulphur Creek are derived from lithologies that are, generally, Franciscan in nature." Mr. Slade later states, according to Ms. Elliott-Fisk, that "the predominant mineralogic composition of alluvial fans underlying the site appears to be derived of Franciscan assemblage shale, sandstone, and greenstone bodies, along with Sonoma volcanics." Ms. Elliott-Fisk states that this statement by Mr. Slade indicated that he relied heavily on the inaccurate Fox et al. (1973) maps for his analyses. Ms. Elliott-Fisk indicates that her extensive field research shows the surficial geology of the Sulphur Canyon draining basin (including its tributary, Heath Canyon) to be approximately 70 percent Sonoma Volcanics (e.g., rhyolitic tuff, rhyolite, dacite and andesite), 20 percent metamorphic units of diverse lithologies, and 10 percent Franciscan sedimentary lithologies. According to Ms. Elliott-Fisk, much more of the region was covered with volcanic flows during the eruption and deposition of the Sonoma Volcanics than is shown by the Fox et al. (1973) maps.

Ms. Elliott-Fisk indicates that the Napa River dominates much of the area Mr. Beckstoffer depicts as Sulphur Canyon Fan south of Zinfandel Lane. She states that Mr. Beckstoffer's depiction of a large Sulphur Canyon Fan "lake" in this region is totally inaccurate. Ms. Elliott-Fisk agrees with Mr. Slade's report concerning his statement that the soils of the Bale Slough are mineralogically different in composition from those of the Sulphur Canyon Fan.

In summary, Ms. Elliott-Fisk states that her research shows that the Sulphur Canyon Fan, the Bale Slough, the Napa River and the Bear Canyon Fan are distinct geomorphic surfaces with correspondingly distinctive soils providing distinctive viticultural environments. According to her, the mineralogic composition of the Bale Slough soils is much more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils. Ms. Elliott-Fisk states that the Sulphur Canyon Fan should be left for a future St. Helena viticultural area, as it has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor under slightly warmer climates and increased precipitation than in the Rutherford region.

Mr. Robert E. Steinhauer, Senior Vice President, Wine World Estates, submitted a letter dated December 21, 1992, in which he states that he does not believe that the boundary of Rutherford should be moved into the city environs of St. Helena and especially not to Sulphur Creek which would include a major portion of the city limits of St. Helena. Mr. Steinhauer states that he does not agree with Mr. Beckstoffer that geology is the only criteria for determining a boundary. According to Mr. Steinhauer, the area north of Zinfandel Lane is not locally or nationally known as Rutherford, especially where it includes the city limits of St. Helena. Mr. Steinhauer states that moving the boundary into St. Helena invalidates the integrity of Rutherford and "guts" any future St. Helena viticultural area. He further states that moving the Rutherford boundary north of Zinfandel Lane does not meet the climatic or geographic evidence requirements that would substantiate this area as Rutherford.

As support for the above statement, Mr. Steinhauer states that the Sulphur Creek Fan has different soil types—primarily Cortina and Pleasanton—as it fans out over the valley floor. These differences are due to the velocity of the depositing waters with the larger soil particles being deposited by the turbulent, fast moving waters at the fan entrance and the finer clay and loam being deposited in the slow moving waters at the extremities of the spreading fan and as the changes in elevation become more gradual. Mr. Steinhauer states that the second major influence on the Sulphur Creek Fan as it extends into the valley floor is the influence of the Napa River deposits since these deposits make the predominate contribution to the soil chemistry and physical structure on the valley floor. Mr. Steinhauer states that the Napa River deposits formulate the soil all along the vineyards on the valley floor. The 1986 Washington's Birthday flood visually exhibited the influence of the Napa River up and down the entire valley floor according to Mr. Steinhauer.

Mr. Steinhauer states that he has farmed property just south of Zinfandel Lane and found the property to be very wet with a water table at approximately three feet requiring substantial drainage. According to Mr. Steinhauer, the soils are a clay loam and very high in nutrients with the exception of potassium. Potassium deficiency is unavoidable due to high water tables. Mr. Steinhauer indicates that this site was planted to white varieties because his farming company felt the soils would produce only average quality Cabernet Sauvignon. Mr. Steinhauer states that the Cortina soils located just south of Sulphur Creek and extending out to the valley floor are composed of more coarse sandy loams with a large amount of stone. These soils are deeper with lower fertility and somewhat droughty and very suitable for the production of all varieties but produce especially very high quality red wines such as Zinfandel and Cabernet Sauvignon. According to Mr. Steinhauer, this area is completely different from the main valley floor and much more similar to the soils of his Beringer home vineyard, Spotswood vineyard, Bartolucci vineyard and other vineyards all located north of Sulphur Creek and located in the city limits of St. Helena. Consequently, Mr. Steinhauer states that the soils evidence does not support the concept that the areas north of Zinfandel Lane and west of Highway 29 are the same as those areas south of Zinfandel Lane. He states that he strongly believes that all of the geologic evidence supports the Zinfandel Lane boundary as being the closest visual demarcation to the geology separating Rutherford from St. Helena.

After reviewing all the pertinent information submitted by all interested parties, ATF has determined that the most appropriate northern boundary for the Rutherford viticultural area is Zinfandel Lane. This boundary is the same as was proposed in Notice No. 729. Proponents of a northern boundary for Rutherford that is further north than Zinfandel Lane did not submit any evidence that this area between Zinfandel Lane and Sulphur Creek has

ever been known, either currently or historically, as Rutherford. The Rutherford and Oakville Appellation Committee, on the other hand, submitted numerous maps and other name evidence which tends to show that this area has always been considered to be part of the greater St. Helena area.

In regard to geographical features, the evidence submitted by both sides is more difficult to interpret. Mr. Beckstoffer, Mr. Freed, and the rest of their group state that Zinfandel Lane is just a county road with no geographical significance. They point out that the Soil Conservation Service lists both the north and south side of Zinfandel Lane as being Pleasanton loam soil, 0 to 2 percent slopes. Mr. Beckstoffer refers to this area as a Pleasanton "lake" with no change in soil type at Zinfandel Lane. In a letter from Mr. Beckstoffer dated December 22, 1992, he refers to a letter from Mr. Slade stating that it is Mr. Slade's professional opinion that the Sulphur Creek Fan extends approximately 1 mile south of Zinfandel Lane. This would place the southern edge of the Sulphur Creek Fan somewhere in the vicinity of Galleron Avenue. Disputing this assertion, Ms. Elliott-Fisk states that the southern edge of the Sulphur Canyon Fan is much closer to Zinfandel Lane and that the deposits shown by Mr. Slade as Sulphur Canyon Fan deposits, located up to 1 mile south of Zinfandel Lane, are really Napa River deposits. In support of Ms. Elliott-Fisk's position, Mr. Richard Mendelson, lawyer for the Rutherford and Oakville Appellation Committee, states in his public hearing testimony that, for the most part, the Sulphur Canyon Fan extends only slightly south of Zinfandel Lane. Mr. Mendelson states that only one part of Zinfandel Lane, in the very middle of the valley, is two-tenths of a mile away from the lowest point of the incursion of this Sulphur Canyon Fan into the Rutherford viticultural area. Mr. Mendelson states that Zinfandel Lane is a close approximation of the southern edge of the Sulphur Canyon Fan as it extends across the Napa Valley floor and is similar to ATF's decision to use the Yountville Cross Road as the northern boundary of the Stags Leap District viticultural area even though it was approximately two-tenths of a mile north of the originally proposed geographic northern boundary.

Mr. Slade states that his examination of published geologic maps for the area show that Franciscan formation rocks comprise the highland area west of the Sulphur and Bear Creek areas. Therefore, Mr. Slade states that both watershed areas drain geologic terrain consisting of similar rocks, in gross chemical and physical composition. Consequently, according to Mr. Slade, based on the results of his examination, there appears to be little difference in the gross physical and chemical character of the sediments of the Sulphur Creek alluvial fan, compared to the Bear Creek alluvial fan. Therefore, according to Mr. Slade, it is reasonable to extend the northern boundary of the Rutherford viticultural area northward to Sulphur Creek.

Ms. Elliott-Fisk agrees that Franciscan formation rocks predominantly comprise the Bear Canyon Fan Complex. She states that her examination of soils from the Inglenook-Napa Valley Home Vineyard, directly east of Bear Canyon on the western side of the Rutherford area, shows that these soils are very gravelly sandy clay loam soils. These soils, according to Ms. Elliott-Fisk, are deep, moderately drained soils derived from marine sedimentary bedrock (Franciscan formation) clasts brought down from Bear Canyon. Ms. Elliott-Fisk states that serpentine clasts are infrequently encountered in these soils, but are more frequent towards the northern edge of the Bear Canyon Fan along Bale Slough. Ms. Elliott-Fisk states that her analysis of these soils shows that the soils are neutral in pH, have well developed structure (firm, subangular blocky to platy at depth), have great rooting depths (beyond 92 inches), and have moderate permeability. She states that the neutral pH values of these soils are both a function of the sandstone parent materials and the influence of the alkaline (basic) serpentine clasts, which slightly increase the pH.

In regard to the Sulphur Canyon fan soils, Ms. Elliott-Fisk states that her extensive field research shows the surficial geology of the Sulphur Canyon draining basin (including its tributary, Heath Canyon) to be approximately 70 percent Sonoma Volcanics (e.g., rhyolitic tuff, rhyolite, dacite and andesite), 20 percent metamorphic units of diverse lithologies, and 10 percent Franciscan sedimentary lithologies. Ms. Elliott-Fisk states that the Sulphur Canyon Fan has rocky soils (with a higher percentage of boulders and large cobbles) and is dominated by rhyolite and other volcanic lithologies with a soil matrix of fine sands and secondary clays, providing for moderate to moderately high vine vigor. Ms. Elliott-Fisk also states that the mineralogic composition of the Bale Slough soils is much more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils.

After reviewing the evidence submitted by Mr. Slade and Ms. Elliott-Fisk, we have determined that there is at least some difference between the Sulphur Canyon Fan soils in comparison to the Bear Canyon Fan soils. We also conclude that the Bale Slough soils are more similar to the Bear Canyon Fan soils than to the Sulphur Canyon Fan soils. Consequently, we have determined that the southern edge of the Sulphur Canyon Fan should be approximately the northern boundary of the Rutherford viticultural area.

Furthermore, from the expert testimony of Mr. Slade and Ms. Elliott-Fisk, we have concluded that the Sulphur Canyon Fan extends either just south of Zinfandel Lane (perhaps up to two-tenths of a mile in the middle of the valley) or approximately 1 mile south of Zinfandel Lane in the vicinity of Galleron Avenue, or possibly somewhere in-between. Consequently, we feel that the northern boundary of Rutherford should either be Zinfandel Lane or approximately 1 mile further south or possibly somewhere in-between.

If the more southern boundary were adopted, the two most obvious choices for a specific boundary would be either Galleron Avenue or a contour line in this area, possibly the 180-foot or 160-foot contour line or somewhere in-between the two. The major problem with both of these choices, or any other choice in this immediate area, is that a contour line or the extension of Galleron Avenue entirely across the valley would cut through a number of people's vineyards. In addition, such a boundary would be very difficult to follow on the ground and might lead to confusion as to who was inside or outside of the boundary.

Since a more southern, northern boundary of Rutherford might create innumerable administrative problems and since there is at least some expert testimony stating that the Sulphur Canyon Fan ends somewhere just south of Zinfandel Lane, we have determined that the northern boundary of the Rutherford viticultural area should remain at Zinfandel Lane as originally proposed. This boundary has the added benefit of not dividing individual vineyards except for vineyards owned by Flora Springs Winery which are located at the extreme western end of Zinfandel Lane. Furthermore, most current and historical maps, as well as other name evidence, suggest that Zinfandel Lane is the most appropriate dividing line between Rutherford and St. Helena. The only exception to using Zinfandel Lane as the northern boundary of Rutherford concerns the

vineyards owned by Flora Springs Winery, located south of Inglewood Avenue and west of the north fork of Bale Slough, which will be addressed in the next section.

Mr. Beckstoffer and Mr. Freed stated in both their oral testimony and in their written comments that grapes grown in vineyards located between Zinfandel Lane and Sulphur Creek have Rutherford character and that the majority of those grapes have been sold to Rutherford wineries and have gone into wines associated with Rutherford. ATF does not believe that this by itself is a major consideration in determining the boundaries of a viticultural area.

Many Rutherford wineries buy grapes from throughout the Napa Valley and possibly from other areas. The mere fact that grapes are purchased by Rutherford wineries and the resulting wine is bottled using a Rutherford winery address, or possibly a brand name using the word Rutherford, does not necessarily mean that the grapes are entitled to be considered as coming from the Rutherford viticultural area. Otherwise, grapes sold to Rutherford wineries from all over the Napa Valley, as well as possibly from other areas, would have to be considered as coming from the Rutherford viticultural area.

To be designated as coming from a particular viticultural area, grapes must be grown within the boundaries of that particular viticultural area. The boundaries of a viticultural area are determined by such things as name evidence, history of the area, and geographical features (climate, soil, elevation, physical features, etc.) rather than by the address or brand name used by wineries who buy grapes from a particular area.

Mr. Beckstoffer and his group have stated that they feel their situation is similar to that of certain portions of Napa County (not within the Napa River watershed), which were eventually included within the Napa Valley viticultural area due to their historical association with the Napa Valley.

ATF agrees that certain outlying portions of Napa County were included within the Napa Valley viticultural area due to their historical association with Napa Valley. However, the grapes grown in these outlying valleys had a long history of being used in wine bearing the appellation Napa Valley. This is different from the current situation whereby grapes grown in the area between Zinfandel Lane and Sulphur Creek are sold to Rutherford wineries and the resulting wine is marketed as Napa Valley wine using a Rutherford winery address or possibly a Rutherford brand name. Consequently, ATF does not feel that the historical use of a portion of the grapes grown in the area between Zinfandel Lane and Sulphur Creek by Rutherford wineries justifies this area's inclusion within the Rutherford viticultural area.

2. Northwestern Boundary of Rutherford. The only individually owned vineyards which are split by Zinfandel Lane are located at the extreme western end of this road and are owned by Flora Springs Winery. Mr. Patrick J. Garvey and Mr. John A. Komes, co-owners of Flora Springs Winery, both have testified and submitted comments stating that their vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, should be included in the Rutherford viticultural area. In support of their request, they have submitted various evidence which they feel, when added together, justifies the inclusion of this vineyard property within Rutherford. Mr. Garvey and Mr. Komes submitted numerous articles from newspapers, magazines and books on wine which mention Flora Springs winery as being a Rutherford winery. In addition, these articles mention the Rutherford character of the wine from Flora Springs and state that the wine was produced from estate vineyards located on the edge of the Rutherford area.

Mr. Garvey and Mr. Komes also submitted historical evidence to support their inclusion within Rutherford. This evidence is a 1895 Napa County map which shows that the historic Rennie Brothers' property of 210.8 acres was entirely located immediately north of Zinfandel Lane. The Rennie Brothers' property was listed as being in Rutherford according to a report titled "The Vineyards of Napa County" which was prepared by E. C. Priber in 1893 at the request of the Board of State Viticultural Commissioners. The historical Rennie Brothers' property, along with additional property located immediately south of Zinfandel Lane, is now owned by Flora Springs Winery.

Mr. Garvey and Mr. Komes request that the northwest boundary of Rutherford be changed to follow the north fork of Bale Slough north of Zinfandel Lane approximately 2,750 feet to a point intersecting the straight line westward extension of the light-duty road known as Inglewood Avenue, west of the 227-foot elevation marker, then following that line west to the 500-foot contour line. This extension of Rutherford would include Flora Springs vineyard blocks E, F and L which are located north and south of Zinfandel Lane as well as west of Bale Slough. Mr. Garvey and Mr. Komes submitted a soils report from Ms. Deborah L. Elliott-Fisk which recommends including the area west of Bale Slough within Rutherford. Ms. Elliott-Fisk states that her field work has shown that the Bale Slough soils, and hence Bale Slough as a geomorphological feature, are included in the proposed Rutherford appellation except for the Komes/Garvey property in question. She recommends that the Bale Slough be in Rutherford and the Sulphur Canyon Fan (as closely as can be approximated across property lines) be in St. Helena.

Ms. Elliott-Fisk states that the Komes/Garvey blocks F and L wrap around the front (eastern side) of a small hill where the Flora Springs Wine Company is sited. Ms. Elliott-Fisk states that both color-infrared vineyard photographs submitted by Mr. Garvey and her soil analyses show that these two blocks are Bale Slough soils, darker in color and heavier in texture than the residual bedrock hillside soils to the west and the alluvial fan soils of the Sulphur Canyon Fan to the east. She states that the north fork of the Bale Slough appears to have been confined to the area between the base of the hills and its current channel in recent geologic times, providing the parent material for the Bale Slough soils of blocks E, F and L that are seen today. These soils, according to Ms. Elliott-Fisk, are a variant of the Maxwell series, with parent material primarily serpentinite alluvium with minor inputs of sandstone and volcanic alluvium.

In summary, Ms. Elliott-Fisk states that the vineyards Mr. Garvey and Mr. Komes propose to include in the Rutherford viticultural area are Bale Slough vineyards with characteristic Bale Slough geology and soils. These vineyards (blocks F and L), according to Ms. Elliott-Fisk, have soils identical to vineyards immediately to the south, such as Komes/Garvey block E, which is currently included within the proposed Rutherford viticultural area.

For contrast, Ms. Elliott-Fisk states that she examined soils immediately adjacent to the eastern bank of the north fork of the Bale Slough (including Komes/Garvey blocks not proposed by them to be included in the Rutherford viticultural area) and areas further eastward to and across Highway 29. According to Ms. Elliott-Fisk, even surficial examination shows these soils to be very different, as these are the soils of the Sulphur Canyon bouldery alluvial fan. According to Ms. Elliott-Fisk, these soils have gravel content of 30 percent or greater, with gravels primarily boulder-sized and secondarily cobbles. The dominant clasts (over 60 percent of the gravels) are rhyolite, rhyolitic tuff,

dacite and andesite from the Sonoma Volcanics formation that dominates the surficial geology of the Sulphur Canyon basin.

After reviewing the current and historical name and boundary information, as well as the geographical information, submitted by Mr. Garvey and Mr. Komes, ATF has determined that the Garvey/Komes vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, should be included within the Rutherford viticultural area. In support of this determination, we note that Mr. Garvey and Mr. Komes have submitted evidence showing that their property west of the north fork of Bale Slough and south of Inglewood Avenue has historically been considered as part of Rutherford. In addition, they submitted numerous articles by wine writers to show that their winery and vineyards are considered to be located on the edge of the Rutherford area. Furthermore, Mr. Garvey and Mr. Komes submitted a soils report by Ms. Elliott-Fisk which concludes that the Garvey/Komes vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, is located on Bale Slough soils rather than on Sulphur Canyon Fan soils. Ms. Elliott-Fisk states that these vineyard soils are identical to the vineyard soils immediately to the south of Zinfandel Lane in Garvey/Komes vineyard block E. Since Mr. Garvey and Mr. Komes submitted substantial evidence which supports the inclusion of a large portion of their property within Rutherford, ATF has decided to include this vineyard property, located south of Inglewood Avenue and west of the north fork of Bale Slough, within the Rutherford viticultural area.

3. Northeastern Boundary of Rutherford. Mr. David Heitz of Heitz Wine Cellars testified at the public hearing on Rutherford and submitted several written comments requesting that the Spring Valley area, located northeast of Rutherford, be included within the Rutherford viticultural area. Mr. Heitz states that he feels that Heitz Wine Cellars was unjustly excluded from the proposed Rutherford viticultural area because of the arbitrary decision of the petitioners to lower the elevation, in the area around his winery and vineyards, to the 380-foot contour line which happens to correspond to his property line, whereas elsewhere the boundary follows the 500-foot contour line.

Mr. Heitz states that Spring Valley, the official U.S.G.S. map designation of the area around his winery and vineyards, is an interesting valley in that it drains both to the north along Taplin Road to the Napa River, and also, in part, to the south through his neighbor's property which is part of the proposed Rutherford viticultural area. Therefore, according to Mr. Heitz, Spring Valley is not so much a separate entity but rather a logical extension of the Rutherford appellation as proposed. Mr. Heitz states that his neighbor's soils are very similar to his own because over the centuries erosion from his property has deposited soils on his neighbor's property. In addition, Mr. Heitz states that the Napa County soils map, issued in 1978 by the United States Department of Agriculture Soil Conservation Service, shows that he shares soils 139 (Forward gravelly loam, 9 to 30 percent slopes), 155 (Kidd loam, 15 to 30 percent slopes), 140 (Forward gravelly loam, 30 to 75 percent slopes), and 141 (Forward-Kidd complex, 50 to 75 percent slopes) with his immediate neighbors as well as other neighbors who are included in the proposed Rutherford appellation.

Mr. Heitz states that as far as climate is concerned, a barbed wire fence is not a climatic barrier and that is what separates him from his neighbors who are in the proposed Rutherford appellation. Mr. Heitz further states that he has no historical documents showing that his property belongs to the Rutherford area. However, from a review of the Rutherford petition, Mr. Heitz states that he cannot find any historical documents to support the inclusion of his neighbors either and they are included within the proposed appellation. In addition, Mr. Heitz states that he owns 17 acres of vineyards on the south side of Zinfandel Lane and has no historical evidence of this property belonging to the Rutherford area, but it is included in the proposed appellation.

The Rutherford and Oakville Appellation Committee does not agree that the Spring Valley area should be included within the Rutherford viticultural area. They state that this area has its own identity, Spring Valley, as shown on the U.S.G.S. map and in the promotional material of wineries in that area. Specifically, they refer to the promotional material from Joseph Phelps Vineyards, located in this area, which states that their vineyard property lies in Spring Valley, a small fold in the hills east of St. Helena. This promotional material goes on to refer to this property in Spring Valley as Joseph Phelps' St. Helena area ranch. Since Spring Valley is a separate valley with no apparent historical or geographical ties to Rutherford, the Rutherford and Oakville Appellation Committee does not feel that Spring Valley should be included within the Rutherford viticultural area.

After reviewing the information submitted by all interested parties, ATF has determined that the Spring Valley area should not be included within the Rutherford viticultural area. ATF made this decision based on the fact that Mr. Heitz did not present any evidence which shows that Spring Valley is currently or historically associated with Rutherford. In addition, Mr. Heitz presented very little geographical information in support of his position that Spring Valley should be included within the Rutherford viticultural area. Instead, he submitted a letter stating that since a portion of his property is adjacent to the 380-foot contour line that is being used by the petitioners as a northeastern boundary for Rutherford, he should be included in the Rutherford area since, in other places, the eastern boundary of Rutherford is the 500-foot contour line. The only geographical information Mr. Heitz submitted was soil information from the *Soil Survey of Napa County, California*, issued by the Soil Conservation Service, that showed that some of the same types of soils that are found on his property are also found on his neighbor's property which is located within the proposed Rutherford viticultural area. Since Spring Valley is located northeast of Zinfandel Lane and is shown on U.S.G.S. maps as a separate valley, ATF does not feel it should be included within Rutherford. Furthermore, since it drains mostly to the north along Taplin Road to the Napa River, which is northeast of Zinfandel Lane, and since Spring Valley is associated more with the greater St. Helena area than with Rutherford, ATF has decided not to include it within the Rutherford viticultural area.

4. Eastern Boundary of Rutherford. ATF has received written comments from Mr. Douglas A. Long and Mr. Gordon C. Anderson stating that they feel their property should be included within the Rutherford viticultural area. Both state that they have been grape farmers and wine producers in the Rutherford area for some 10 years and have always considered their property as being part of the Rutherford area. They state that their property should be included within Rutherford because of its geographical location, historical relationship with the town of Rutherford, current post office box location in Rutherford, and similar soils and climatic conditions as those in Rutherford.

Mr. Long and Mr. Anderson both state that they believe an arbitrary line of 500 feet in elevation does not adequately

take into consideration their property, which consists of vineyards and agricultural land between 800 feet and 1200 feet in elevation. They state that inasmuch as the difference between the arbitrary 500-foot elevation and their property is less than 200 to 300 yards, they believe that the oversight of not including the area south of Lake Hennessey known as Pritchard Hill would be an extreme oversight.

The Rutherford and Oakville Appellation Committee does not agree that the Pritchard Hill area, located south of Lake Hennessey, should be included within the Rutherford viticultural area. They point out that this area is shown on U.S.G.S. maps as Pritchard Hill, not as Rutherford. Since this area has its own identity, the Rutherford and Oakville Appellation Committee does not feel it should be included within Rutherford.

After reviewing all pertinent information submitted concerning this area, ATF has determined that the area known as Pritchard Hill should not be included within the Rutherford viticultural area. Neither Mr. Long nor Mr. Anderson submitted any evidence to support their position that the Pritchard Hill area has the same, or very similar, soils and climatic conditions as those in Rutherford. In addition, neither Mr. Long nor Mr. Anderson submitted any evidence to support their position that the Pritchard Hill area has a historical relationship with the Rutherford area. Furthermore, it has been determined that a post office box location in Rutherford is not necessarily a sign of a significant relationship to Rutherford since anyone can obtain such a post office box if they pay the appropriate fee. Also, it has been determined that the elevation of most of the vineyard property in the Pritchard Hill area is between 800 and 1200 feet which is considerably higher than the other vineyards in the proposed Rutherford area. Consequently, due to the lack of evidence showing that the Pritchard Hill area is historically and/or geographically closely related to the Rutherford area, ATF has decided not to include the Pritchard Hill area within the Rutherford viticultural area.

5. Southwestern Boundary of Rutherford. Mr. Anthony A. Bell of Beaulieu Vineyard submitted letters dated November 15, 1991, and July 17, 1992, requesting that Beaulieu Vineyard properties No. 2 and No. 4 be included within the Rutherford viticultural area due to their historical association and geographical similarity to Rutherford. Subsequently, Mr. Bell submitted a letter dated December 7, 1992, requesting that their earlier requests be amended to only include Beaulieu Vineyard property No. 2 within Rutherford. Mr. Bell requested that Beaulieu Vineyard property No. 4 remain in the Oakville viticultural area. Mr. Bell states that Beaulieu Vineyard property No. 2 should be located within the Rutherford viticultural area because of its historical association with Beaulieu Vineyard Cabernet Sauvignon wines. These wines, according to Mr. Bell, have contributed greatly to the development and consumer recognition of the Rutherford name. Mr. Bell also states that Beaulieu Vineyard property No. 2 has the same or very similar soils and climate as the rest of their vineyard property in the Rutherford area.

Mr. Phillip Freese of Robert Mondavi Winery supports the inclusion of Beaulieu Vineyard property No. 2 within the Rutherford viticultural area. In public testimony given on December 9, 1992, Mr. Freese stated that the Rutherford and Oakville Appellation Committee, of which the Robert Mondavi Winery is a member, relied on a drainage channel on the north side of Beaulieu Vineyard property No. 2, as well as a division of the Rutherford Bear Canyon Fan Complex (Franciscan lithology) and the Oakville Grade Fan Complex (Great Valley Sequence lithology), to provide the geographical feature for the drawing of the viticultural area boundary. Mr. Freese states that subsequent historical research shows that this drainage channel had been redirected by man for the ease of viticultural operations in the subject vineyard blocks. According to Mr. Freese and Mr. Bell, the original drainage of this property went through the middle of the property prior to being rerouted. Mr. Freese states that the boundary should be placed along a well established access road just south of the southern border of Beaulieu Vineyard property No. 2. Mr. Freese states that this access road serves as the northern entrance to the Robert Mondavi Winery property.

Mr. Freese states that historically the grapes from Beaulieu Vineyard No. 2 have been considered Rutherford and have been recognized by Beaulieu Vineyard as Rutherford. In addition, according to Mr. Freese and Mr. Bell, the wine produced from grapes from this vineyard property has been labeled as Rutherford wine. Furthermore, according to Mr. Freese, historical records from the latter part of the nineteenth century show that this property was considered part of Rutherford. These historical records, according to Mr. Freese, also show that the property immediately south of Beaulieu Vineyard property No. 2 was, at that time, owned by H.W. Crabb of Oakville. This historical "Crabb" property is now owned by the Robert Mondavi Winery which considers its location to be Oakville, according to Mr. Freese. Consequently, from both a historical and geographical perspective, Mr. Freese and Mr. Bell state that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area.

The Rutherford and Oakville Appellation Committee also state that Beaulieu Vineyard property No. 2 should be included within Rutherford. They have submitted amended boundaries which, if approved, would include this vineyard property within Rutherford.

After reviewing the information submitted by Mr. Bell and Mr. Freese, ATF has determined that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area whereas Beaulieu Vineyard property No. 4 should not be included in this area. Substantial historical and geographical evidence has been submitted in support of the inclusion of Beaulieu Vineyard property No. 2 within Rutherford. Furthermore, we have received a petition signed by numerous persons within the Napa Valley supporting this proposal. In addition, we have not received any opposition to this proposal. Consequently, ATF has decided that Beaulieu Vineyard property No. 2 should be included within Rutherford.

ATF's decisions with respect to the boundaries as discussed above are hereby incorporated into the analysis of the Rutherford viticultural area as follows.

Boundary

The boundary of the Rutherford viticultural area may be found on two United States Geological Survey maps, titled Rutherford Quadrangle and Yountville Quadrangle, with a scale of 1:24,000. The boundary is described in § 9.133 which can be found in the regulations portion of this document.

Viticultural Area Name

The name Rutherford has been associated with the area between St. Helena and Oakville in the Napa Valley for over 100 years. From the mid-nineteenth through the early twentieth centuries, Rutherford moved from an unnamed region with an unknown reputation to become a settled and integral part of Napa County and of the Napa Valley wine industry. Wine writers as early as the 1880s wrote highly of wines from the Rutherford area, including those of Gustave

Niebaum, founder of Inglenook Winery. In 1838 George Yount arrived in the area now called Yountville and planted his first grapes in the 1850s. His vineyard is reported to be the first planted in Napa County. In 1864, Yount gave 1,040 acres of land to his granddaughter, Elizabeth (Yount) Rutherford and her husband Thomas. According to historian John Wichels, "The settlement surrounding this ranch was thereafter known as Rutherford." The southern border of the ranch runs from Silverado Trail to the Napa River along a straight line which incorporates what is now Skellenger Lane. That lane and the Rutherfords' southern property line is used to define part of the southern border of the Rutherford viticultural area.

From 1850 to 1880, Rutherford steadily increased in prominence as a community center. One reason for its emergence was the establishment of the rail system from Napa to Calistoga in 1868. Geographer William Ketteringham writes, "With the completion of the [railroad] line in 1868 other settlements along the line such as Rutherford and Oakville sprang up."

The Rutherford Post Office was established in 1871 and the Rutherford voting precinct was established in 1884. During the 1870s and early 1880s, there was rapid expansion in the number of vineyard plantings and wine production. The cellars of E.B. Smith and Charles Krug (which eventually became those of Niebaum) produced 76,000 gallons.

Following the wine boom of the 1870s and early 1880s, Napa Valley wineries suffered a significant setback as phylloxera set in. Vineyard plantings decreased 83 percent over a ten-year period, from 18,177 acres in 1890 to 3,000 acres in 1900. This period was followed by Prohibition from 1919 to 1933. Surprisingly, planted acreage during Prohibition increased in Napa Valley to keep pace with the burgeoning demand for grapes used to make medicinal, sacramental and home wines, which remained legal. After Prohibition, planted acreage in Napa County remained at around 10,000 acres through the 1960s. Not until the wine renaissance of the 1970s was the acreage total of 1890 surpassed.

Although the period after Prohibition until the early 1970s was relatively stagnant in the wine sector, the community of Rutherford in particular continued to bolster its reputation for quality grapes and wine. Throughout these years, Beaulieu and Inglenook were regular award winners at the California State Fair. Inglenook owner John Daniel prided himself on the fact that all of Inglenook's grapes were estate grown on its vineyards in Rutherford, with the sole exception of Daniel's Napa Nook Ranch located south of the Oakville area on land now owned by the John Daniel Society in Yountville.

The name "Rutherford" has a long history of use by newspapers, magazines and wine books to describe this prominent Napa Valley wine community. Some examples of these publications include The Connoisseurs' Handbook of California Wines by Charles Olken, Earl Singer and Norman Roby, third edition, revised, 1984; The Wine Spectator magazine, "The Rutherford Bench" by James Laube, July 15, 1987; Friends of Wine magazine, "Napa Winery Profiles: The Quest for Site, May 1984, Volume XXI, Number 2; and the Modern Encyclopedia of Wine by Hugh Johnson, second edition, revised and updated, 1987. Numerous newspapers throughout the country have had articles about wine which contain references to the Rutherford area. Historical/Current Evidence of Boundaries.

Because the village of Rutherford is not an incorporated township, there are no municipal boundaries on which to rely in delimiting this area. Consequently, the petitioners to a great extent utilized commercial and public sector uses of the community name in establishing the boundaries of the Rutherford viticultural area. The Rutherford Crossroads and the Rutherford Post Office are the most notable examples of the name's use within the area. It is also worth noting that there are three wineries whose brand names refer directly to Rutherford—Rutherford Hill, Rutherford Vintners and Round Hill Winery's Rutherford Ranch Brand. All three wineries are located in the Rutherford viticultural area. Postal and telephone service areas are less relevant in terms of precise boundaries for the area but do attest to consumer recognition of Rutherford as a distinct and separate community.

Also, various wine press accounts have helped to define what is considered to be the Rutherford area. One such account from The Connoisseurs' Handbook of California Wines includes the following entry:

> Rutherford (Napa) Small community located in southcentral Napa Valley between Oakville and St. Helena in a temperate Region II climate. * * * The area is home for many important wineries— Beaulieu, Inglenook Caymus, Rutherford Hill* * *.

Of the approximately 31 bonded wineries located in the area, most have Rutherford addresses. The main exceptions include approximately 6 wineries at the northern boundary which have St. Helena addresses and one winery along the Silverado Trail in Rutherford that has a Napa address. These exceptions apparently relate to the fact that these wineries have their mail delivered directly from the St. Helena or Napa post offices and do not maintain post office boxes in Rutherford. These bonded winery addresses (with the exceptions noted) generally substantiate the boundaries proposed in the petition.

Geographical Features

Napa Valley can be divided into a group of distinct topographical areas: the lowland Napa River valley between the Mayacamas and Vaca Ranges; the mountains themselves; and the intermontane, eastern portions of the county beyond the watershed of the Napa River. The elevational differences and relief between these areas are pronounced and influence all aspects of the region's physical geography (climate, geomorphology, hydrology, soils and vegetation).

The floor of the Napa Valley is 25 miles in length south to north and between one and four miles wide. Traversing the entire length of the valley is the Napa River, which commences north of Calistoga and drains into San Pablo Bay. Along its course through the valley, the river elevation drops from around 380 feet near the city of Calistoga to around 20 feet near the city of Napa. The gently sloping valley floor, however, is interrupted by numerous bedrock outcrops which form isolated hills. In other places, the valley floor features broad alluvial fans extending toward the center of the valley from mountain streams which serve as tributaries to the Napa River.

Two fundamental geographic distinctions within Napa Valley are particularly relevant to the delimitation of the Rutherford viticultural area: on the east-west axis, mountain versus valley floor, delineating the valley floor viticultural environments; and on the north-south axis, climatic differences as the result of a decreasing incursion of maritime air into the valley.

These distinctions can be integrated with the community identity of Rutherford (and the other communities of Napa Valley) to provide consumers with meaningful and distinctive reference points concerning the viticulture of Napa Valley. From the perspective of a wine consumer, such basic geographic distinctions offer a useful introduction to the complexity of viticulture in Napa Valley.

Climate

The major climatic difference between the watershed area of Napa Valley and the outlying valleys is the maritime nature of the former. Whereas the valley as defined by the watershed area is classified as a coastal valley, the outlying valleys are considered interior or inland valleys, representing a different climatic type. This is well evidenced by the vegetation, the distribution of which is primarily controlled by climate. Moderate to high elevations in the interior valleys are covered by chamise chaparral and other plant communities tolerant of summer drought and heat. At these same elevations in the Napa Valley river drainage, mixed forests of douglas fir, oak, madrone and coastal redwood dominate. Bedrock geology and soils act as secondary influences controlling these vegetation distributions.

Higher elevation and mountainous regions within Napa Valley experience shorter growing seasons (though they may extend longer into early autumn), fewer degree days, lower daily maximum temperatures during the growing season, less fog, increased solar radiation and increased precipitation. These conditions affect the time of wine grape harvest. In the mountainous areas, desirable acid-sugar levels often are reached much after the harvest on the valley floor. In some mountain settings, with small intermontane basins, local cold air drainage may result in marginal conditions for wine grape production.

Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up valley.

A mesoclimate is a subdivision of a macroclimate. California's Mediterranean climate is considered a macroclimate. Napa Valley's mesoclimates refer to modifications of this macroclimate due to altitude/elevation or distance from the nearest ocean. Because of the diminution of marine influences as one travels up valley, the northern regions of the valley are characterized by much warmer summers and significantly colder and wetter winters than in the south. That is, summer temperatures and total precipitation increase as one travels north. Summer days down valley often are cool, foggy and breezy. The fog usually dissipates early in the day, clearing first to the north and progressing southward to the bay.

Altitudinal variation also affects temperature distribution. The lower, southern troughs of the valley experience the lowest winter temperatures along the valley floor. As the elevation rises up valley, temperatures also rise, between 1.5 and 2.8 degrees Fahrenheit for each 500 feet.

As a result of these mesoclimatic trends along the valley floor, wine writers often speak of different climate regions within Napa Valley. The following excerpt from William Massee's Guide to the Wines of America is illustrative of the association of community names with mesoclimatic variations in Napa Valley.

> [In the Carneros area] there is a tempering influence from the northern round of bay, San Pablo, a receptacle for rivers—the Sacramento and San Joaquin, the Petaluma and Napa—and many creeks. Cool air currents sweep down from the mountain and in from the ocean, bringing fog. It is a cool Region One, * * *. Around Yountville, it is about one and a half—you can often see the fog line in the morning that marks the difference. Near Oakville, it is a cool Region Two, where Beaulieu grows its Johannisberg Riesling, up behind Bob Mondavi. Rutherford is a solid Region Two but it is warmer in Vineyard No. 3, to the east, because it gets the late sun. Up around Calistoga, it is Region Three.

The Rutherford viticultural area is warmer than the area around Oakville to the south and cooler than the St. Helena area to the north. The incursion of fog is also less pronounced in the Rutherford area than in the Oakville area.

Within this general mesoclimatic context, local relief or topoclimate is significant in determining diurnal temperature pattern within the Rutherford viticultural area. Topoclimate refers to a subdivision of mesoclimates influenced by topography, which may be elevational, topographic blocking by a barrier, or a change in slope or aspect.

In sum, as opposed to some mountain settings of Napa Valley, this part of the central portion of the valley floor offers the type of climatic conditions necessary for the production of a wide variety of wine grapes. Considerable acreage is planted to several varieties, including Cabernet Sauvignon, Chardonnay, Sauvignon Blanc, among others, throughout this region.

Geological History

Geological history is an important factor in shaping Napa Valley viticultural environments. Napa Valley is largely a synclinal (down-folded) valley of Cenozoic age. Faulting (accompanied by minor folding) throughout the valley later resulted in the formation of bedrock "islands" (outcrops) across the valley floor. These rock islands have been modified during the last million years through erosion by the Napa River, its tributaries and other erosional slope processes. Sections of the old Napa River channel are still visible here and there in the valley, including in several places within the Rutherford viticultural area.

In this central portion of the valley, much of the old river channel and its alluvial sediments have been buried by more recent Napa River floodplain sediments, but they principally have been covered by alluvial fans emerging from the mountain streams on the western and eastern sides of the valley. The age and size of these fan surfaces are a function of climatic change, basin lithology (mineral composition and structure of rocks), and basin size, all of which vary among the four major drainage basins in the Rutherford and Oakville areas, accounting for differences in these fan surfaces. The northern fans (in the Rutherford area) are the larger geomorphic features, have more significantly controlled the course of the Napa River through time, and are geologically more diverse.

Geomorphology, Hydrology and Soils

The occurrence of specific soil types can be related to topography in Napa Valley, as topography is one of the five variables that controls soil formation. The Soil Survey of Napa County, California [hereinafter Soil Survey], published by the U.S. Department of Agriculture Soil Conservation Service in 1978, divides the 11 soil associations of Napa County into two general categories: lowland depositional soils, which account for four of the 11 soil associations and are found on alluvial fans, flood plains, valleys and terraces; and upland residual soils, which account for the remaining seven soil associations, and are found on bedrock and colluvially-mantled slopes. The "General Soil Map" from the Soil Survey shows the location of these upland and lowland soils. This map as well as the text of the Soil Survey show that the lowland-upland soil break occurs at around the 500-foot elevation. This same elevation line, with minor exceptions, has been used to differentiate the Rutherford viticultural area from the mountains to the east and west.

According to the petitioners, soils and geomorphic mapping should go hand in hand, as soils usually are mapped according to geomorphic surfaces or units. Within the valley floor area of Napa Valley, there are both alluvial fans and river deposits. The petitioners state that the size and location of these fans, their (dis)similarity in terms of geologic

parent material and soils, and the course of the Napa River and other drainage systems can help to establish viticultural area boundaries on the valley floor. For example, north of Rutherford is a massive fan emanating from the Sulphur Canyon drainage system in the Mayacamas Range. This fan sweeps across the valley floor in St. Helena from west to east and lies generally north of Zinfandel Lane. Pleasanton loam soils predominate. The Rutherford and Conn Creek fans south of Zinfandel Lane push against the Sulphur Canyon fan from the south. Although the point of convergence of these three fans does not lie along a straight line, Zinfandel Lane does serve to separate these areas and therefore provides a good northern boundary for the Rutherford viticultural area. As one proceeds down Napa Valley, Zinfandel Lane also marks the widening of the valley floor, which continues until the appearance of the Yountville Hills at the southern end of Oakville.

Specific Climatological Information

A previously published report, prepared by the National Oceanic and Atmospheric Administration and submitted on behalf of the Napa Valley Appellation petition in 1980, established the general weather and climatic differences of Napa County. This report showed that Napa Valley can be divided into two general climatic regions (coastal and inland), and three topographical areas—the valley itself lying within the Mayacamas Range to the west and the Vaca Range to the east; the area within the mountains themselves; and the area covering the eastern portion of the county.

The elevation within Napa County increases as one progresses north up the valley. With this increase in elevation there is an increase in precipitation, ranging from 20 inches in the south to 50 inches in the north. Additionally, the coastal influence in the Napa Valley results in a relatively moderate climate in the south (warmer than the northern area of Napa Valley in the winter and cooler in the summer) and a relatively extreme climate in the north (hotter than the southern area of Napa Valley in the summer and colder in the winter).

Two sets of data have been submitted to show the difference in temperature, measured in degree-days, between the different areas in Napa Valley. The first set of data is from the Cooperative Extension, University of California, Napa Valley, and is shown below:

Location	Degree-days	Temperature relative to Rutherford in Center of valley (percent)
Calistoga	3369	+7
St. Helena	3229	+2
Rutherford	3159	
Oakville	3124	−1
Napa	2882	−9

The second set of data was collected by the Rutherford and Oakville Appellation Committee. The weather stations used to collect this data are generally located within the center of the Napa Valley, where they are subject to similar relative humidity, wind direction and solar radiation conditions. The data is shown below and is the average reading for the 4-year period between 1985 and 1988:

Location	Degree-days	Temperature relative to Rutherford in Center of valley (percent)
Calistoga	3768	+11
St. Helena	3575	+5
Rutherford	3389	
Oakville	3039	−10
Yountville	2695	−20
Napa	3180	−6

Rainfall

The Cooperative Extension, University of California, Napa Valley, has prepared a chart showing that rainfall generally increases as one proceeds up the Napa Valley from Napa to Calistoga. The data is shown below:

Location	Approximate yearly rainfall (inches)
Calistoga	45 to 50
St. Helena	35 to 40
Rutherford	35 to 40
Oakville	35
Yountville	30
Napa	30

Soil

The General Soil Map of Napa County, California, prepared by the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, shows most of the Napa Valley floor as being generally the same types of soils. These soils are the Bale-Cole-Yolo series which are nearly level to gently sloping, well drained and somewhat poorly drained loams, silt loams, and clay loams on flood plains, alluvial fans, and terraces. In addition to the Bale series, the Pleasanton soil series dominates much of the central section of the Napa Valley floor. Both of these soil series consist of deep, alluvial soils.

According to Associate Professor Deborah L. Elliott-Fisk, Department of Geography, University of California, Davis, the contribution of small percentages of metamorphic clasts (such as serpentine and chert) on the Rutherford fan soils contributes to minor soil differences between the Rutherford viticultural area and Oakville. The composition of these types of minerals and rocks tends to raise pH slightly in the Rutherford area and alters soil texture and plant nutrition. The high frequency of clasts from Sonoma Volcanics in the Oakville fan soils unifies the Oakville viticultural area and distinguishes it from Rutherford.

After a review of the entire record in this matter, including all data submitted pursuant to the public hearing, ATF believes that there is sufficient evidence with respect to name, boundaries, and geographical features to warrant the establishment of the Rutherford viticultural area.

Oakville Viticultural Area

In today's issue of the **Federal Register**, ATF is also publishing a Treasury decision on the Oakville viticultural area. This area is in Napa Valley adjacent to the Rutherford viticultural area. All interested parties should review this Treasury decision.

Petitions for Rutherford Bench and Oakville Bench Viticultural Areas

The petitions for the Rutherford Bench and Oakville Bench viticultural areas, which were submitted at the same time as the petitions for the Rutherford and Oakville viticultural areas, have been officially withdrawn by the Rutherford and Oakville Appellation committee. Consequently, no further action will be taken concerning these petitions.

Miscellaneous

ATF does not wish to give the impression by approving the Rutherford viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Rutherford wines.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Accordingly, ATF certifies that the designation of a viticultural area itself has no significant economic impact on a substantial number of small businesses within or without the area because any commercial advantage can only come from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in subpart C is amended to add the title of § 9.133 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

Section 9.133 Rutherford.

Par. 3. Subpart C is amended by adding § 9.133 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.133 Rutherford.

(a) *Name.* The name of the viticultural area described in this section is "Rutherford."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Rutherford viticultural area are two U.S.G.S. topographical maps of the 1:24,000 scale:

(1) "Yountville Quadrangle, California," edition of 1951, photorevised 1968.

(2) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The Rutherford viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the "Rutherford" map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55° 06' 28" W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40° 31' 42" W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51° 00' W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally northwesterly direction in T.7 N., R.5 W. through Sections 21, 20, 17, 18, 17, and 18 to the northwest portion of Section 7 where the 500-foot contour line intersects a southwestward straight line extension of the light-duty road known as Inglewood Avenue;

(9) Thence in a straight line in a northeasterly direction along this extension of Inglewood Avenue to its intersection with the north fork of Bale Slough;

(10) Thence in a southeasterly direction along the north fork of Bale Slough approximately 2,750 feet to its intersection with the end of the county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, near the 201-foot elevation marker;

(11) Then in a northeasterly direction along Zinfandel Avenue (Zinfandel Lane) approximately 2.12 miles to the intersection of that road and Silverado Trail, then continuing northeasterly in a straight line to the 380-foot contour line;

(12) Then following the 380-foot contour line southeasterly through Section 33 to the western border of Section 34, T.8 N., R.5 W., then following that section line north to the 500-foot contour line;

(13) Then following the 500-foot contour line southeasterly to the western border of Section 2, T.7 N., R.5 W., then south along that section line past Conn Creek to its intersection with the 500-foot contour line northwest of the unnamed 832-foot peak;

(14) Then continuing in a westerly direction and then a generally southeasterly direction along the 500-foot contour line through Sections 3, 2,

11 and 12 to the intersection of that contour line with the southern border of Section 12 (on Yountville map);

(15) Then proceeding in a straight line in a westerly direction to the intersection of the Silverado Trail with Skellenger Lane, the point of beginning.

Signed: June 1, 1993.

Daniel R. Black,

Acting Director.

Approved: June 21, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–15650 Filed 7–1–93; 8:45 am]

BILLING CODE 4810–31–U

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27 CFR Part 9

[T.D. ATF–343; RE: Notice Nos. 728, 738 and 756]

RIN 1512–AA07

The Oakville Viticultural Area (89F–92P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Oakville." The petition for establishing this viticultural area was submitted by the Rutherford and Oakville Appellation Committee which is composed of seven wineries and seven grape-growers within the Rutherford and Oakville areas of Napa County, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Rulemaking Proceeding

Petition

On March 8, 1989, the Rutherford and Oakville Appellation Committee petitioned ATF for establishment of a viticultural area in Napa County, California, to be known as "Oakville." The viticultural area proposed by the petitioners is located in the south-central portion of the Napa Valley approximately 10 miles northwest of the city of Napa. In general terms, the proposed area extends as far north as Skellenger Lane, as far east as the 500-foot contour line on the western side of the Vaca Mountain Range, as far west as the 500-foot contour line on the eastern side of the Mayacamas Mountain Range, and as far south as approximately one mile northwest of the town of Yountville. The proposed area contains approximately 13 bonded wineries and consists of about 5,760 total acres, most of which are densely planted to vineyards.

Notice of Proposed Rulemaking

In response to the petition, ATF published Notice No. 728 in the **Federal Register** on September 17, 1991 (56 FR 47039), proposing establishment of the Oakville viticultural area. The notice detailed the boundaries as proposed in the petition, with some minor modifications, and requested comments from all interested persons. Written comments were to be received on or before November 18, 1991.

Comments to Notice of Proposed Rulemaking

ATF received 8 comments in response to the notice of proposed rulemaking. Several of these commenters submitted only general comments about the desirability of public hearings or the undesirability of smaller viticultural areas within the Napa Valley. However, two commenters were opposed to the northwestern boundary and two more commenters were opposed to the southwestern boundary of Oakville. Both commenters who opposed the northwestern boundary stated that they felt that any boundaries for Oakville should not include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name.

The two commenters who opposed the southwestern boundary of Oakville stated that this boundary extended too far south into what they felt was Yountville. According to one of these commenters, the Oakville/Yountville boundary has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek.

Based on the controversial nature of the comments received, ATF decided to reopen the comment period for an additional 90 days in order to obtain more information on the establishment of the Oakville viticultural area, its proposed boundaries, and other possible boundaries.

Reopening Notice

On April 22, 1992, ATF published Notice No. 738 (57 FR 14681) reopening the comment period on both the proposed Oakville and Rutherford viticultural areas. ATF specifically requested comments on 11 questions which were asked in this reopening notice which mostly pertained to possible boundary changes. Interested persons were given until July 21, 1992, to submit their comments.

Comments to Reopening Notice

ATF received a total of 62 comments in response to the reopening notice.

Five commenters, plus petitions containing the names of 56 additional interested persons within the Napa Valley, disagreed with the northwestern boundary of Oakville. These commenters and petitioners felt that any boundaries for Oakville should not include Beaulieu Vineyard properties No. 2 and No. 4 which, according to these commenters, have historically been associated with Beaulieu Vineyard and its Cabernet Sauvignon wines, and which have contributed greatly to the development and consumer recognition of the Rutherford name. Six commenters, on the other hand, stated that they agreed with the originally proposed northwestern boundary of Oakville and did not feel that it should be changed to exclude Beaulieu Vineyard properties No. 2 and No. 4. These commenters stated that these two vineyard properties were located in the Oakville area and referred to the information in the original Rutherford and Oakville petitions as evidence for their position.

Sixteen commenters disagreed with the proposed southwestern boundary of Oakville. These commenters felt that the southwestern boundary extended too far south into what they felt was Yountville. According to these commenters, the Oakville/Yountville boundary has always been known by the locals to be Dwyer Road to Highway 29, then Yount Mill Road to Rector Creek. Eleven commenters, however, agreed with the proposed southwestern boundary of Oakville. These commenters stated that they had lived and worked in the area for thirty years or more and that they had never heard of Dwyer Road (Lane) and Yount Mill Road being used as the boundary line between Oakville and Yountville. And finally, in addition to the previous boundary disputes, one commenter stated that she objected to an Oakville appellation since she is not convinced that more appellations are needed in the Napa Valley.

Hearing Notice

As a result of the large number of comments received to the reopening notice and the conflicting nature of the information contained in those comments, ATF determined that a public hearing was necessary and would serve the public interest. Consequently, on October 2, 1992, ATF published Notice No. 756 (57 FR 45588) which announced the time and place of a public hearing to be held by ATF concerning the establishment of the Oakville viticultural area. The notice stated that the hearing would be held in Napa, California, on December 10, 1992, and requested that all interested persons who wished to testify at the hearing submit a letter notifying ATF of their intent to comment on or before November 9, 1992. The notice also stated that interested persons could continue to submit written comments on this matter until December 28, 1992.

Public Hearing

A public hearing was held on December 10, 1992, in Napa, California, for the purpose of gathering additional information and to receive evidence with respect to the establishment of the Oakville viticultural area, the proposed boundaries, and other possible boundaries. Twenty-one persons testified at the public hearing.

Controversial Boundaries

As a result of the hearing testimony and the large number of written comments received concerning the establishment of the Oakville viticultural area, ATF has determined that there are three boundary disputes that need to be resolved. These disputes involve the northwestern, southwestern, and eastern boundaries of Oakville. We will address the evidence presented by the different parties for each boundary dispute and then give our final decision as to where the boundaries of the Oakville viticultural area are located and why.

1. Northwestern Boundary of Oakville. Mr. Anthony A. Bell of Beaulieu Vineyard submitted letters dated November 15, 1991, and July 17, 1992, requesting that Beaulieu Vineyard properties No. 2 and No. 4 be included in the Rutherford viticultural area, rather than the Oakville viticultural area, due to their historical association and geographical similarity to Rutherford. Subsequently, Mr. Bell submitted a letter dated December 7, 1992, requesting that their earlier requests be amended to only include Beaulieu Vineyard property No. 2 within Rutherford. Mr. Bell requested that Beaulieu Vineyard property No. 4 remain in the Oakville viticultural area. Mr. Bell states that Beaulieu Vineyard property No. 2 should be located within the Rutherford viticultural area because of its historical association with Beaulieu Vineyard Cabernet Sauvignon wines. These wines, according to Mr. Bell, have contributed greatly to the development and consumer recognition of the Rutherford name. Mr. Bell also states that Beaulieu Vineyard property No. 2 has the same or very similar soils and climate as the rest of Beaulieu's vineyard property in the Rutherford area.

Mr. Phillip Freese of Robert Mondavi Winery supports the inclusion of Beaulieu Vineyard property No. 2 within the Rutherford viticultural area. In public testimony given on December 9, 1992, Mr. Freese stated that the Rutherford and Oakville Appellation Committee, of which the Robert Mondavi Winery is a member, relied on a drainage channel on the north side of Beaulieu Vineyard property No. 2, as well as a division of the Rutherford Bear Canyon Fan Complex (Franciscan lithology) and the Oakville Grade Fan Complex (Great Valley Sequence lithology), to provide the geographical feature for the drawing of the viticultural area boundary. Mr. Freese states that subsequent historical research shows that this drainage channel had been redirected by man for the ease of viticultural operations in the subject vineyard blocks. According to Mr. Freese and Mr. Bell, the original drainage of this property went through the middle of the property prior to being rerouted. Mr. Freese states that the boundary should be placed along a well established access road just south of the southern border of Beaulieu Vineyard property No. 2. Mr. Freese states that this access road serves as the northern entrance to the Robert Mondavi Winery property.

Mr. Freese states that historically the grapes from Beaulieu Vineyard No. 2 have been considered Rutherford and have been recognized by Beaulieu Vineyard as Rutherford. In addition, according to Mr. Freese and Mr. Bell, the wine produced from grapes from this vineyard property has been labeled as Rutherford wine. Furthermore, according to Mr. Freese, historical records from the latter part of the nineteenth century show that this property was considered part of Rutherford. These historical records, according to Mr. Freese, also show that the property immediately south of Beaulieu Vineyard property No. 2 was, at that time, owned by H.W. Crabb of Oakville. This historical "Crabb" property is now owned by the Robert Mondavi Winery which considers its location to be Oakville, according to Mr. Freese. Consequently, from both a historical and geographical perspective, Mr. Freese and Mr. Bell state that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area.

The Rutherford and Oakville Appellation Committee also state that Beaulieu Vineyard property No. 2 should be included within Rutherford. They have submitted amended boundaries which, if approved, would

include this vineyard property within Rutherford rather than Oakville.

After reviewing the information submitted by Mr. Bell and Mr. Freese, ATF has determined that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area whereas Beaulieu Vineyard property No. 4 should remain in the Oakville viticultural area. Substantial historical and geographical evidence has been submitted in support of the inclusion of Beaulieu Vineyard property No. 2 within Rutherford. Furthermore, we have received a petition signed by numerous persons within the Napa Valley supporting this proposal. In addition, we have not received any opposition to including Beaulieu Vineyard property No. 2 within Rutherford. Consequently, ATF has decided that Beaulieu Vineyard property No. 2 should be included within the Rutherford viticultural area and Beaulieu Vineyard property No. 4 should be included within the Oakville viticultural area.

2. Southwestern Boundary of Oakville. ATF received numerous comments from persons, most of whom belonged to an organization known as Growers for Meaningful Appellations (GMA), who did not agree with the southwestern boundary of Oakville as proposed by the Rutherford and Oakville Appellation Committee. These persons stated that they felt the proposed southwestern boundary of Oakville extended too far south into what they felt was Yountville. These persons stated that they felt the boundary in this area should be Dwyer Road, Yount Mill Road and Rector Creek.

At the public hearing for Oakville, held on December 10, 1992, in Napa, California, substantial evidence was presented by residents of the area which showed that the originally proposed southwestern boundary for Oakville was much more appropriate than using Dwyer Road and Yount Mill Road. For example, the boundaries of the 1890 Oakville school district, published by the Napa County Board of Supervisors, and the 1884 and 1893 Napa County viticultural inventories, published by the California State Board of Viticultural Commissioners and the San Francisco Wine Merchant, support the position that Dwyer Road and Yount Mill Road have never been used as the dividing line between Oakville and Yountville. The residents of this area believe instead that the depositional ridge which approximates the southwestern boundary of Oakville is the appropriate boundary from both a historical and current perspective.

Immediately prior to and during the public hearing, the organization known as Growers for Meaningful Appellations changed their position and agreed that the southwestern boundary of Oakville should remain as proposed by the Rutherford and Oakville Appellation Committee. Consequently, there is now general agreement among substantially all parties involved that the southwestern boundary of Oakville should remain as proposed by the Rutherford and Oakville Appellation Committee.

After reviewing the information submitted at the public hearing, as well as the numerous written comments received on this matter, ATF has determined that no changes should be made to the originally proposed southwestern boundary of Oakville. Since numerous historical and geographical evidence was presented in support of the currently proposed boundaries, and since almost all opposition to the current boundaries has been withdrawn, ATF has decided to adopt the previously proposed southwestern boundary of Oakville as the appropriate boundary.

3. Eastern Boundary of Oakville. ATF has received several requests from persons who own vineyard property in the hills almost directly east of the Oakville Cross Road to include this area within the Oakville viticultural area. Mr. R. Gregory Rodeno, a lawyer representing Dalla Valle Vineyards, submitted evidence showing that the 500-foot contour line in this area, which is the currently proposed eastern boundary for Oakville, would cut through the center of Mr. Gustav Dalla Valle's vineyards. Mr. Rodeno also submitted evidence to show that this 500-foot contour line would also cut through the vineyards owned by Weitz Vineyard, Inc.

In addition, Mr. Rodeno submitted evidence from the Soil Survey of Napa County, California, prepared by the United States Department of Agriculture Soil Conservation Service, which characterizes all of the soils in the area as "Boomer Series," an acid loam and acid clay loam soil type. The area containing the vineyards of Weitz and Dalla Valle is designated on the soils map as 107 which is Boomer loam on slopes of 2 to 15 percent. The areas surrounding it are designated 109 which are Boomer gravelly loam on slopes of 30 to 50 percent and contain rocky debris and pebbles to a greater extent than the more gently sloping 107 designation.

Since the 500-foot contour line in this particular area divides vineyards that are located on the exact same soil series (Boomer loam on slopes of 2 to 15 percent), Mr. Rodeno suggests that the 700-foot contour line would make a much better eastern boundary for Oakville in this area than the 500-foot contour line.

In addition, Mr. Randy Lewis of Oakville Ranch Vineyards submitted a letter dated December 21, 1992, which states that the boundary for the Oakville viticultural area should be modified to include Oakville Ranch Vineyards. Mr. Lewis states that due to his winery's name, history, location and style of fruit, Oakville Ranch Vineyards is considered an Oakville winery by the public and by the wineries in Napa Valley that buy grapes from his winery.

Mr. Lewis states that his winery and vineyards are a highly visible part of the unique landscape that includes Backus vineyards and Dalla Valle vineyards. He states that all of these vineyards have identical or nearly identical soil and similar weather conditions. Mr. Lewis states that this contiguous area is the only large area of planted hillside vineyards that one sees driving east across Oakville Cross Road toward the Silverado Trail. Mr. Lewis indicates that a portion of the grapes from his vineyards are purchased by Joseph Phelps Winery because of their distinct similarity to grapes from Backus vineyards. According to Mr. Lewis, Backus vineyards are leased by Joseph Phelps Winery and are located within the currently proposed Oakville viticultural area.

In support of his position, Mr. Lewis submitted a letter from Ms. Deborah Elliott-Fisk on the geographic and viticultural distinctiveness of what Ms. Elliott-Fisk calls the "Backus Terraces" of which Oakville Ranch Vineyards is an integral part. Based on Ms. Elliott-Fisk's report, Mr. Lewis states that the "Backus Terraces" (of which he is a part) are the only extensive uplifted portion of the Napa Valley floor in the Napa Valley viticultural area. Because of the similarity of this area to the rest of the proposed Oakville viticultural area and because of the historical association of this area with Oakville, Mr. Lewis believes that this area should be included within the Oakville viticultural area.

The soils report, prepared by Ms. Elliott-Fisk and submitted as an enclosure to Mr. Lewis's letter, states that this area is an uplifted section of the Napa Valley floor (i.e., these sediments were deposited along the valley floor and soils largely formed on the valley floor). Ms. Elliott-Fisk states that the acreage proposed for inclusion by Oakville Ranch is between the 500-foot contour line and a 1006-foot

benchmark on a terrace along a flight of uplifted valley floor terraces immediately east of the Silverado Trail and north of the Oakville Cross Road. Ms. Elliott-Fisk states that this acreage is an old alluvial fan and that this fan has been broken and uplifted along a series of faults, producing 4 distinctive, reasonably "flat" geomorphic surfaces, referred to hereafter as terraces. Ms. Elliott-Fisk states that vineyards are planted along the lower three terraces, including the Backus vineyard on the first terrace, the Dalla Valle vineyard on the second terrace, and Oakville Ranch on the third terrace. She indicates that no vineyards are planted (or envisioned as being planted) on the fourth terrace above (south and east of) the 1006-foot benchmark. Ms. Elliott-Fisk states that the boundary modification proposed by Oakville Ranch is clearly the best way to bring this distinctive area into the proposed Oakville viticultural area.

Ms. Elliott-Fisk states that there are 3 important geological characteristics of the "Backus Terraces" which should be noted and which justify the inclusion of this acreage in Oakville based on its geology. These 3 geological characteristics are:

(1) The sole rock type here is andesite from the Sonoma Volcanics; andesite is an igneous, extrusive (i.e., volcanic) rock of intermediate composition; andesite is present here in a very few rock outcrops, but more importantly as the soil parent material, broken down as sands, gravels, pebbles, cobble and boulders; this lithology is similar, but not identical, to the Rector Canyon Fan;

(2) This entire landscape is an old alluvial fan deposit that formed on the Napa Valley floor as an alluvial fan over 250,000 years ago (her date on the minimum age of the fan cobbles in the Backus vineyard); at some point following valley floor fan construction, the fan was uplifted and broken along a series of listric faults, forming the terraces that can be seen today; and

(3) The tectonic uplift that created these terraces was accompanied by the rapid downcutting of Rector Creek and the formation of Rector Canyon; Rector Canyon has extremely steep valley walls that could only have formed with rapid tectonic uplift; the Rector Canyon fan was deposited along the valley floor accompanying this erosion and formation of Rector Canyon.

Ms. Elliott-Fisk states that the geomorphic deposits and hence soil parent materials that form the "Backus Terraces" are alluvial fan deposits derived from the Sonoma Volcanics, and in her examination almost exclusively andesite. She indicates that like the Oakville Grade and Rector Canyon fans, these deposits were laid down across the Napa Valley floor from mountain streams that were tributaries to the Napa River. Unlike these two other regions, however, this particular location experienced very rapid geologic uplift, with the fan lifted and warped up above the valley floor. Nonetheless, the parent material for the soil is alluvial fan sediments, with the soils classified as volcanic alluvial fan soils. Ms. Elliott-Fisk also states that the Backus vineyards soil (which is most similar to the Perkins series, but is really its own series as it is much older) covers the entire "Backus Terraces" surface which includes the vineyards owned by Dalla Valle and by Oakville Ranch Vineyards. There are no other soils across this entire surface, according to Ms. Elliott-Fisk. Consequently, Ms. Elliott-Fisk states that, from a geologic perspective, the "Backus Terraces" belong in the Oakville viticultural area.

After reviewing the information submitted by Mr. Lewis and Mr. Rodeno, ATF has determined that the "Backus Terraces" area should be included within the Oakville viticultural area. This will entail going up to the 1006-foot elevation benchmark in this particular area. We feel that this is justified in this one area due to expert testimony to the effect that the soils in this area were originally formed on the valley floor approximately 250,000 years ago and then, at some later time, uplifted and broken along a series of listric faults, forming the terraces that are visible today. We have also received evidence to the effect that the soils on these terraces are either identical or almost identical and that the climate is very similar to the rest of the Oakville area. In addition, U.S.G.S. maps of the area do not delineate this area as a separate entity with a different name than the rest of the Oakville area. And finally, the landowners in the area in question consider and advertise their property as being part of Oakville.

The original petitioners for the Oakville viticultural area used the 500-foot contour line for their eastern and western boundaries to separate mountain and valley viticultural environments. According to Ms. Elliott-Fisk, this is justified in regards to the overall topography, soils and climates of the Napa Valley. However, Ms. Elliott-Fisk states that in this particular area, the Oakville Ranch proposal to include a small section of the lower mountain slopes should be regarded as a unique modification of this valley-mountain delimitation due to its being an uplifted section of the Napa Valley floor with identical soils as that found on the valley floor.

As a result of the extensive geographical information submitted by Mr. Lewis and Mr. Rodeno, as well as evidence that the area in question is considered to be part of Oakville, ATF has decided to include this area within the Oakville viticultural area.

ATF's decisions with respect to the boundaries as discussed above are hereby incorporated into the analysis of the Oakville viticultural area as follows

Boundary

The boundary of the Oakville viticultural area may be found on two United States Geological Survey maps, titled Yountville Quadrangle and Rutherford Quadrangle, with a scale of 1:24,000. The boundary is described in § 9.134 which can be found in the regulations portion of this document.

Viticultural Area Name

The name Oakville has been associated with the area between Yountville and Rutherford in the Napa Valley for over 100 years. From the mid-nineteenth through the early twentieth centuries, Oakville moved from an unnamed region with an unknown reputation to become a settled and integral part of Napa County and of the Napa Valley wine industry. Wine writers as early as the 1880s wrote highly of wine from H.W. Crabb's To-Kalon vineyards in Oakville. Mr. Crabb's extensive landholdings, business and influence in the region south of Rutherford contributed to the establishment of the village of Oakville. While little is known about the man H.W. Crabb, much is written of his grape-growing techniques and the success of his vineyards.

From 1850 to 1880, Oakville steadily increased in prominence as a community center. One reason for its emergence was the establishment of the rail system from Napa to Calistoga in 1868. Geographer William Ketteringham writes, "With the completion of the [railroad] line in 1868 other settlements along the line such as Rutherford and Oakville sprang up."

The Oakville Post Office was established in 1867 and the Oakville voting precinct was established in 1902. During the 1870s and early 1880s, there was rapid expansion in the number of vineyard plantings and wine production. H.W. Crab saw his first plantings of 1868 become the core of over 290 vineyard acres by 1880. During that year he produced over 300,000 gallons of wine or approximately 11 percent of all the wine produced in Napa Valley.

Following the wine boom of the 1870s and early 1880s, Napa Valley wineries

suffered a significant setback as phylloxera set in. Vineyard plantings decreased 83 percent over a ten-year period, from 18,177 acres in 1890 to 3,000 acres in 1900. This period was followed by Prohibition from 1919 to 1933. Surprisingly, planted acreage during Prohibition increased in Napa Valley to keep pace with the burgeoning demand for grapes used to make medicinal, sacramental and home wines, which remained legal. After Prohibition, planted acreage in Napa County remained at around 10,000 acres through the 1960s. Not until the wine renaissance of the 1970s was the acreage total of 1890 surpassed.

The name Oakville has a long history of use by wine books and magazines to describe this prominent Napa Valley wine community. Some examples of these publications include The Connoisseurs' Handbook of California Wines by Charles E. Olken, Earl G. Singer and Norman S. Roby, third edition, revised, 1984; The Wine Spectator magazine, "The Rutherford Bench" by James Laube, July 15, 1987; the Friends of Wine magazine, "Napa Winery Profiles: The Quest for Site", May 1984, and "Back to the Vineyards" by Bob Thompson, May, 1985; and the Modern Encyclopedia of Wine, by Hugh Johnson, second edition, revised and updated, 1987.

Historical/Current Evidence of Boundaries

Because the village of Oakville is not an incorporated township, there are no municipal boundaries on which to rely in delimiting this area. Consequently, the petitioners to a great extent utilized commercial and public sector uses of the community name in establishing the boundaries of the Oakville viticultural area. The Oakville Crossroads and the Oakville Post Office are the most notable examples of the name's use within the area.

Postal and telephone service areas are less relevant in terms of precise boundaries for the area but do attest to consumer recognition of Oakville as a distinct and separate community.

Also, various wine press accounts have helped to define what is considered to be the Oakville area. One such account from The Connoisseurs' Handbook of California Wines includes the following entry:

> Oakville (Napa). Situated in the southern end of Napa Valley, halfway between Yountville and Rutherford, this way station is the home of several wineries (foremost among them the Robert Mondavi Winery) and adjoins some of the Napa Valley's best Cabernet growing turf. The superb Martha's Vineyard produced by Heitz Cellars and a substantial portion of the Robert Mondavi Cabernet vineyards are in Oakville, along the western edge of the valley floor. Other wineries in the area are Villa Mt. Eden and an Inglenook production and bottling plant.

Of the approximately 13 bonded wineries located in the area, all but two have Oakville addresses. The only exceptions are one winery east of the Silverado Trail which uses a Napa address and one winery just south of the village of Oakville which uses a Rutherford address, due to its affiliation with a winery in the Rutherford area. The winery using the Napa address appears to do so because they receive their mail directly from the Napa post office rather than maintaining a post office box in Oakville. These bonded winery addresses (with the exceptions noted) help to substantiate the boundaries proposed in the petition.

Geographical Features

Napa Valley can be divided into a group of distinct topographical areas: The lowland Napa River valley between the Mayacamas and Vaca Ranges; the mountains themselves; and the intermontane, eastern portions of the county beyond the watershed of the Napa River. The elevational differences and relief between these areas are pronounced and influence all aspects of the region's physical geography (climate, geomorphology, hydrology, soils and vegetation).

The floor of the Napa Valley is 25 miles in length south to north and between one and four miles wide. Traversing the entire length of the valley is the Napa River, which commences north of Calistoga and drains into San Pablo Bay. Along its course through the valley, the river elevation drops from around 380 feet near the city of Calistoga to around 20 feet near the city of Napa. The gently sloping valley floor, however, is interrupted by numerous bedrock outcrops which form isolated hills. The Yountville Hills are the highest of these "bedrock islands" and have influenced the geographic evolution of the Oakville area. In other places, the valley floor features broad alluvial fans extending toward the center of the valley from mountain streams which serve as tributaries to the Napa River.

Two fundamental geographic distinctions within Napa Valley are particularly relevant to the delimitation of the proposed Oakville viticultural area: On the east-west axis, mountain versus valley floor, delineating the valley floor viticultural environments; and on the north-south axis, climatic differences as the result of a decreasing incursion of maritime air into the valley.

These distinctions can be integrated with the community identity of Oakville (and the other communities of Napa Valley) to provide consumers with meaningful and distinctive reference points concerning the viticulture of Napa Valley. From the perspective of a wine consumer, such basic geographic distinctions offer a useful introduction to the complexity of viticulture in Napa Valley.

Climate

The major climatic difference between the watershed area of Napa Valley and the outlying valleys is the maritime nature of the former. Whereas the valley as defined by the watershed area is classified as a coastal valley, the outlying valleys are considered interior or inland valleys, representing a different climatic type. This is well evidenced by the vegetation, the distribution of which is primarily controlled by climate. Moderate to high elevations in the interior valleys are covered by chamise chaparral and other plant communities tolerant of summer drought and heat. At these same elevations in the Napa Valley river drainage, mixed forests of douglas fir, oak, madrone and coastal redwood dominate. Bedrock geology and soils act as secondary influences controlling these vegetation distributions.

Higher elevation and mountainous regions within Napa Valley experience shorter growing seasons (though they may extend longer into early autumn), fewer degree days, lower daily maximum temperatures during the growing season, less fog, increased solar radiation and increased precipitation. These conditions affect the time of wine grape harvest. In the mountainous areas, desirable acid-sugar levels often are reached much after the harvest on the valley floor. In some mountain settings, with small intermontane basins, local cold air drainage may result in marginal conditions for wine grape production.

Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up valley.

A mesoclimate is a subdivision of a macroclimate. California's Mediterranean climate is considered a macroclimate. Napa Valley's mesoclimates refer to modifications of this macroclimate due to altitude/elevation or distance from the nearest ocean. Because of the diminution of marine influences as one travels up valley, the northern regions of the valley are characterized by much warmer

summers and significantly colder and wetter winters than in the south. That is, summer temperatures and total precipitation increase as one travels north. Summer days down valley often are cool, foggy and breezy. The fog usually dissipates early in the day, clearing first to the north and progressing southward to the bay.

Altitudinal variation also affects temperature distribution. The lower, southern troughs of the valley experience the lowest winter temperatures along the valley floor. As the elevation rises up valley, temperatures also rise, between 1.5 and 2.8 degrees Fahrenheit for each 500 feet.

As a result of these mesoclimatic trends along the valley floor, wine writers often speak of different climate regions within Napa Valley. The following excerpt from William Massee's Guide to the Wines of America is illustrative of the association of community names with mesoclimatic variations in Napa Valley.

[In the Carneros area] there is a tempering influence from the northern round of bay, San Pablo, a receptacle for rivers—the Sacramento and San Joaquin, the Petaluma and Napa—and many creeks. Cool air currents sweep down from the mountain and in from the ocean, bringing fog. It is a cool Region One, * * *. Around Yountville, it is about one and a half—you can often see the fog line in the morning that marks the difference. Near Oakville, it is a cool Region Two, where Beaulieu grows its Johannisberg Riesling, up behind Bob Mondavi. Rutherford is a solid Region Two but it is warmer in Vineyard No. 3, to the east, because it gets the late sun. Up around Calistoga, it is Region Three.

The Oakville viticultural area is cooler than the area around Rutherford to the north and warmer than the Yountville area to the south. The incursion of fog is especially more pronounced at the southern end of the Oakville area. The southern boundary of the Oakville area follows the elevation and hydrologic divide west of the Yountville Hills and the crest of Rector Canyon fan, along Rector Creek, east of the Yountville Hills. Rector Creek converges with Conn Creek and the Napa River at the southern end of the Oakville viticultural area.

Within this general mesoclimatic context, local relief or topoclimate is significant in determining diurnal temperature pattern within the Oakville viticultural area. Topoclimate refers to a subdivision of mesoclimates influenced by topography, which may be elevational, topographic blocking by a barrier, or a change in slope or aspect.

In sum, as opposed to some mountain settings of Napa Valley, this part of the central portion of the valley floor offers the type of climatic conditions necessary for the production of a wide variety of wine grapes. Considerable acreage is planted to several varieties, including Cabernet Sauvignon, Chardonnay, Sauvignon Blanc, among others, throughout this region.

Geological History

Geological history is an important factor in shaping Napa Valley viticultural environments. Napa Valley is largely a synclinal (down-folded) valley of Cenozoic age. Faulting (accompanied by minor folding) throughout the valley later resulted in the formation of bedrock "islands" (outcrops) across the valley floor. These rock islands have been modified during the last million years through erosion by the Napa River, its tributaries and other erosional slope processes. Sections of the old Napa River channel are still visible here and there in the valley, including in several places within the Oakville viticultural area.

In this central portion of the valley, much of the old river channel and its alluvial sediments have been buried by more recent Napa River floodplain sediments, but they principally have been covered by alluvial fans emerging from the mountain streams on the western and eastern sides of the valley. The age and size of these fan surfaces are a function of climatic change, basin lithology (mineral composition and structure of rocks), and basin size, all of which vary among the four major drainage basins in the Oakville and Rutherford areas, accounting for differences in these fan surfaces.

The northern fans (in the Rutherford area) are the larger geomorphic features, have more significantly controlled the course of the Napa River through time, and are geologically more diverse.

Soils and Hydrology

The occurrence of specific soil types can be related to topography in Napa Valley, as topography is one of the five variables that controls soil formation. The Soil Survey of Napa County, California [hereinafter Soil Survey], published by the U.S. Department of Agriculture Soil Conservation Service in 1978, divides the 11 soil associations of Napa County into two general categories: lowland depositional soils, which account for four of the 11 soil associations and are found on alluvial fans, floodplains, valleys and terraces; and upland residual soils, which account for the remaining seven soil associations, and are found on bedrock and colluvially-mantled slopes. The "General Soil Map" from the Soil Survey shows the location of these upland and lowland soils. This map as well as the text of the Soil Survey show that the lowland-upland soil break occurs at around the 500-foot elevation. This same elevation line has been used, with one exception, to differentiate the Oakville viticultural area from the mountains to the east and west.

As one proceeds down Napa Valley, Zinfandel Lane marks the widening of the valley floor, which continues until the appearance of the Yountville Hills at the southern end of Oakville. Part of the southern boundary of the Oakville viticultural area is a depositional ridge which projects perpendicularly across the valley towards the Yountville Hills. This ridge is located at the narrowest point between the Yountville Hills and the Mayacamas Range. To the north of this ridge, streams drain towards the northeast, and to the south of this ridge streams drain to the southeast. The ridge, which is at an overall elevation of around 200 feet, thus functions as a drainage divide.

Specific Climatological Information

A previously published report, prepared by the National Oceanic and Atmospheric Administration and submitted on behalf of the Napa Valley Appellation petition in 1980, established the general weather and climatic differences of Napa County. This report showed that Napa Valley can be divided into two general climatic regions (coastal and inland), and three topographical areas—the valley itself lying within the Mayacamas Range to the west and the Vaca Range to the east; the area within the mountains themselves; and the area covering the eastern portion of the county.

The elevation within Napa County increases as one progresses north up the valley. With this increase in elevation there is an increase in precipitation, ranging from 20 inches in the south to 50 inches in the north. Additionally, the coastal influence in the Napa Valley results in a relatively moderate climate in the south (warmer than the northern area of Napa Valley in the winter and cooler in the summer) and a relatively extreme climate in the north (hotter than the southern area of Napa Valley in the summer and colder in the winter).

Two sets of data have been submitted to show the difference in temperature, measured in degree-days, between the different areas in Napa Valley. The first set of data is from the Cooperative Extension, University of California, Napa Valley, and is shown below:

Location	Degree-days	Temperature relative to Rutherford in center of valley
Calistoga	3369	+7 percent.
St. Helena	3229	+2 percent.
Rutherford	3159	0
Oakville	3124	−1 percent.
Napa	2882	−9 percent.

The second set of data was collected by the Rutherford and Oakville Appellation Committee. The weather stations used to collect this data are generally located within the center of the Napa Valley, where they are subject to similar relative humidity, wind direction and solar radiation conditions. The data is shown below and is the average reading for the 4-year period between 1985 and 1988:

Location	Degree-days	Temperature relative to Rutherford in center of valley
Calistoga	3768	+11 percent.
St. Helena	3575	+5 percent.
Rutherford	3389	0
Oakville	3039	−10 percent.
Yountville	2695	−20 percent.
Napa	3180	−6 percent.

Rainfall

The Cooperative Extension, University of California, Napa Valley, has prepared a chart showing that rainfall generally increases as one proceeds up the Napa Valley from Napa to Calistoga. The data is shown below:

Location	Approximate yearly rainfall (inches)
Calistoga	45 to 50
St. Helena	35 to 40
Rutherford	35 to 40
Oakville	35
Yountville	30
Napa	30

Soil

The "General Soil Map" of Napa County, California, prepared by the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service, shows most of the Napa Valley floor as being generally the same types of soils. These soils are the Bale-Cole-Yolo series which are nearly level to gently sloping, well drained and somewhat poorly drained loams, silt loams, and clay loams on flood plains, alluvial fans, and terraces.

In addition to the Bale series, the Pleasanton soil series dominates much of the central section of the Napa Valley floor. Both of these soil series consist of deep, alluvial soils.

According to Associate Professor Deborah L. Elliott-Fisk, Department of Geography, University of California, Davis, the high frequency of clasts from Sonoma Volcanics in the Oakville fan soils unifies the Oakville viticultural area and distinguishes it from Rutherford. The contribution of small percentages of metamorphic clasts (such as serpentine and chert) on the Rutherford fan soils contributes to minor soil differences between the Rutherford viticultural area and Oakville. The composition of these types of minerals and rocks tends to raise the soil pH slightly in the Rutherford area and alters soil texture and plant nutrition.

After a review of the entire record in this matter, including all data submitted pursuant to the public hearing, ATF believes that there is sufficient evidence with respect to name, boundaries, and geographical features to warrant the establishment of the Oakville viticultural area.

Rutherford Viticultural Area

In today's issue of the **Federal Register**, ATF is also publishing a Treasury decision on the Rutherford viticultural area. This area is in Napa Valley adjacent to the Oakville viticultural area. All interested parties should review this Treasury decision.

Petitions for Oakville Bench and Rutherford Bench Viticultural Areas

The petitions for the Oakville Bench and Rutherford Bench viticultural areas, which were submitted at the same time as the petitions for the Oakville and Rutherford viticultural areas, have been officially withdrawn by the Rutherford and Oakville Appellation Committee. Consequently, no further action will be taken concerning these petitions.

Miscellaneous

ATF does not wish to give the impression by approving the Oakville viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Oakville wines.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Accordingly, ATF certifies that the designation of a viticultural area itself has no significant economic impact on a substantial number of small businesses within or without the area because any commercial advantage can only come from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine. Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in subpart C is amended to add the title of § 9.134 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.134 Oakville.

Par. 3. Subpart C is amended by adding § 9.134 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.134 Oakville.

(a) *Name.* The name of the viticultural area described in this section is "Oakville."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Oakville viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale:

(1) "Yountville Quadrangle, California," edition of 1951, photorevised 1968.

(2) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The Oakville viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Yountville quadrangle map at the point where the county road known as the Silverado Trail intersects Skellenger Lane, just outside the southwest corner of Section 12, Township 7 North (T.7 N.), Range 5 West (R.5 W.), the boundary proceeds in a southwesterly direction in a straight line approximately 1.7 miles along Skellenger Lane, past its intersection with Conn Creek Road, to the point of intersection with the main channel of the Napa River (on the Rutherford quadrangle map);

(2) Then south along the center of the river bed approximately .4 miles to the point where an unnamed stream drains into the Napa River from the west;

(3) Then along the unnamed stream in a generally northwesterly direction to its intersection with the west track of the Southern Pacific Railroad Track;

(4) Then southeasterly along said railroad track 1,650 feet to a point which is approximately 435 feet north of the centerline of the entry road to Robert Mondavi Winery (shown on the map) to the southeast corner of Assessor's Parcel Number 27–250–14;

(5) Thence southwesterly S 55°06′28″ W for 3,869 feet along the common boundary between Assessor's Parcel Numbers 27–250–14 and 27–280–50/51 to the southwest corner of Assessor's Parcel Number 27–250–14;

(6) Thence northwesterly N 40°31′42″ W for 750 feet along the westerly property line of Assessor's Parcel Number 27–250–14;

(7) Thence southwesterly S 51°00′ W in a straight line to the 500-foot contour line of the Mayacamas Range in the northwestern corner of Section 28, T.7 N., R.5 W.;

(8) Then proceeding along the 500-foot contour line in a generally southeasterly direction through Sections 28, 29, 20, 29, 28, 29, 28, 33 and 34 of T.7 N., R.5 W. and Section 3 of T.6 N., R.5 W. to its intersection with the unnamed stream known locally as Hopper Creek near the middle of Section 3;

(9) Then along the unnamed stream (Hopper Creek) southeasterly and, at the fork in Section 3, northeasterly along the stream to the point where the stream intersects with the unnamed dirt road in the northwest corner of Section 2, T.6 N., R.5 W;

(10) Then proceed in a straight line to the light duty road to the immediate northeast in Section 2, then along the light duty road in a northeasterly direction to the point at which the road turns 90 degrees to the left;

(11) Then proceed along the light duty road 625 feet, then proceed northeasterly (N 40°43′ E) in a straight line 1,350 feet, along the northern property line of Assessor's Parcel Number 27–380–08 (not shown on the map), to State Highway 29, then continuing in a straight line approximately .1 mile to the peak of the 320+ foot hill along the western edge of the Yountville Hills;

(12) Then proceed due east to the second 300-foot contour line, then follow that contour line around the Yountville Hills to the north to the point at which the 300-foot contour line exits the Rutherford quadrangle map for the second time;

(13) Then proceed (on the Yountville quadrangle map) in a straight line in a northeasterly direction approximately N 34°30′ E approximately 1,000 feet to the 90 degree bend in the unimproved dirt road shown on the map, then along that road, which coincides with a fence line (not shown on the map) to the intersection of Conn Creek and Rector Creek;

(14) Then along Rector Creek to the northeast past the Silverado Trail to the Rector Reservoir spillway entrance, then proceed due north along the spillway of Rector Reservoir, then east and northeast along the shoreline of Rector Reservoir to the point where the first unnamed stream enters the Reservoir;

(15) Thence follow the unnamed stream north and northeast to where it intersects an unimproved dirt road at the 1006-foot benchmark;

(16) Then proceed in a straight line approximately .6 mile due west to the intersection of an unnamed stream, then follow said stream downslope to the 500-foot contour line, and along that contour line northwesterly through sections 18 and 13 to the intersection of the contour line with the southern border of Section 12 in T.7 N, R.5 W.;

(17) Then proceed in a straight line in a westerly direction to the intersection of Skellenger Lane with the Silverado Trail, the point of beginning.

Signed: June 1, 1993.

Daniel R. Black,

Acting Director.

Approved: June 21, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–15651 Filed 7–1–93; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–4674–8]

Ocean Dumping; Designation of Site, Norfolk, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates a new dredged material disposal site located offshore of Norfolk, Virginia as an EPA approved ocean dumping site for the dumping of dredged material that meets ocean dumping criteria removed from the entrance channels to the Chesapeake Bay and other lower Chesapeake Bay areas. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. The final site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on July 2, 1993.

ADDRESSES: Send comments to:

William C. Muir, Environmental Assessment Branch, Environmental Services Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

The file supporting this designation is available for public inspection at the following locations:

Environmental Protection Agency, Public Information Reference Unit, room 2904 (rear), 401 M Street, SW., Washington, DC 20460.

EPA Region III, 841 Chestnut Street, Philadelphia, PA.

Norfolk District, U.S. Army Corps of Engineers, 803 Front Street, Norfolk, VA.

FOR FURTHER INFORMATION CONTACT: William C. Muir, Environmental Assessment Branch, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2541.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is within Region III and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. (See 39 FR 16186, (May 7, 1974)).

The EPA has prepared a draft and final Environmental Impact Statement (EIS) entitled "Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Located Offshore Norfolk Virginia." On August 9, 1991 a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** at (56 FR 154). The public comment period on this draft EIS closed September 30, 1991.

On February 5, 1993, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** at (58 FR 23). The public comment period on the final EIS closed March 8, 1993. No major comments or concerns were raised on the final EIS. Anyone desiring a copy of the EIS may obtain one from the address given above.

EPA has initiated section 7 consultation under the Endangered Species Act with the Fish and Wildlife Service and National Marine Fisheries Service.

C. Site Designation

The Norfolk Ocean Disposal Site is the primary disposal site for the disposal of suitable material from dredging operations in the lower Chesapeake Bay region.

The Norfolk Ocean Disposal Site, which is needed to accommodate current and future disposal requirements of dredged material, is located approximately 17 nautical miles (31 kilometers) west of the mouth of the Chesapeake Bay. The site is delineated by a circle with a radius of 4 nautical miles (7.4 kilometers) centered at 36 degrees, 59 minutes north latitude, and 75 degrees, 39 minutes west longitude. The Norfolk Ocean Disposal Site partially overlaps an area used for dredge material disposal prior to the 1960's. Water depth in the area ranges from 43–85 feet (13.1–26 meters). Extensive characterization and delineation of this site as an acceptable disposal site is presented in the EIS.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at any early stage. Where feasible, locations off the Continental Shelf are preferred. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The designated site conforms to the five general criteria.The characteristics of the designated site are below reviewed in terms of the 11 specific criteria for site selection.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast (40 CFR 228.6(a)(1))

The proposed Norfolk Ocean Disposal Site is centered at 36 degrees, 59 feet North latitude, and 75 degrees, 39 feet West longitude, and has a radius of four nautical miles (7.4 kilometers). Water depths in the area range from 43 to 85 feet (13 to 26 meters). Water depths near the center of the area range from 65 to 80 feet (19.8 to 24.4 meters). The bottom topography is generally flat with depth contours running parallel to the coastline. The bottom topography slopes from 43 feet (13.1 meters) at the northwest edge of the disposal area to 85 feet (25.9 meters) on the eastern edge of the area. The center of the proposed Norfolk Ocean Disposal Site is located approximately 17 nautical miles (31 kilometers) from the nearest land.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Lining Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The Chesapeake Bay, Norfolk Harbor, and adjoining offshore ocean areas support a relatively abundant and diverse biological community. The distribution and abundance of individual species depends on the spawning habits and environmental preferences of the species and the season of the year. Fish and other aquatic organisms (e.g., crabs, plankton) migrate into and out of the Bay throughout the year enroute to spawning grounds or juvenile development areas. Several of the fish and shellfish species that inhabit nearshore areas have commercial or recreational importance. Previous studies, however, have shown that the proposed Norfolk Ocean Disposal Site is not an important breeding, spawning, or nursery area for fish because it is located far offshore. No harvestable quantities of fish or shellfish are known to exist in the area.

Studies indicate that disposal activities at the proposed site are unlikely to have substantial adverse effects on aquatic organisms, mainly because organism populations are widely distributed on the continental shelf.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228(a)(3))

The center of the proposed Norfolk Ocean Disposal Site is located 17 nautical miles (31.5 kilometers) from the nearest recreational beach at Virginia Beach, Virginia. Thus, the closest edge of the site is 13 nautical miles (24

kilometers) from the beach. The Triangle Wrecks, a popular sport fishing and diving location, is located 4.8 nautical miles (8.9 kilometers) from the site. Net sediment transport is negligible. Bottom currents are meteorologically controlled and may account for the nonuniform sedimentation rates measured throughout the site . In addition, material with an age less than 10 years was deposited at the site, which indicates that deposition of material occurs at the site. It is unlikely that dredge material disposed at the site would be transported to beaches or other amenity areas.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4))

The proposed Norfolk Ocean Disposal Site will be used for disposal of new work and maintenance material dredged from the lower Chesapeake Bay. The proposed site could be used for the disposal of appropriate material from the Thimble Shoals, Cape Henry, Atlantic, Hampton Roads, York Spit, and possibly other channels within the lower Chesapeake Bay area. The quantity of material to be placed at the site depends on the quality of the dredged material. Only material that meets ocean dumping criteria will be disposed at the proposed site. This includes unconsolidated fine to medium grain sands, silts, and clays. The Craney Island Containment Area will receive material not suitable for ocean disposal, and the Dam Neck Ocean Disposal Site will receive material for which it has been designated. Dredge material that consists of clean sands will be used for beach replenishment or disposed at the Dam Neck site.

Different dredged material disposal management plans would result in varying amounts of dredge material placed in each of the disposal areas. U.S. Army Corps of Engineers, Norfolk District estimates that 250 million cubic yards of dredge material from Federal, State, and private dredging projects may be disposed at the proposed site over the next 50 years. To dispose of this material at the proposed Norfolk Ocean Disposal Site, the Corps of Engineers will probably employ bucket and scow or hopper dredges of 5,000 to 8,000 cubic yard capacity. The dredges will be either split-hull or bottom-dump design.

The suitability of materials dredged from areas in the lower Chesapeake Bay for ocean disposal has been investigated by several authors. These studies are summarized in the Supplemental Information Report to the final Environmental Impact Statement for the Norfolk Harbor and Channels, Virginia, Deepening and Disposal project prepared by the U.S. Army Corps of Engineers, Norfolk District. These studies, which include the use of bioassays and chemical analysis, conclude that only sediments dredged from the southern branch of the Elizabeth River could not be ocean disposed. In addition, materials dredged from the outer channels (i.e., Thimble Shoal and Atlantic channels) could be used for beach replenishment.

The suitability of dredge material for ocean disposal, however, would have to be determined for each dredging operation. According to section 103 of the MPRSA, any proposed dumping of dredge material into ocean waters must be evaluated through the use of criteria listed in 40 CFR parts 220 through 228. The Corps of Engineers and the EPA have specific guidance for the evaluation of potential environmental impacts of the ocean disposal of dredged material. The suitability for ocean disposal of dredge material is determined through the use of evaluation techniques such as bioassays and bioaccumulation testing.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The U.S. Army Corps of Engineers, Norfolk District, sponsored a monitoring program for the site in the early 1980's. Parameters that were monitored, as identified in the 1982 Final Environmental Impact Statement, include benthic infauna, bioaccumulation in three species of marine organisms, sediment quality, zooplankton, and 20 water quality variables. Investigations that the monitoring data collected by these efforts when combined with statistical models can be used as an effective "early warning system" for major water quality changes that may be associated with disposal activities at the Norfolk Ocean Disposal Site.

During the summer of 1990, sediment and benthic samples were collected by the U.S. EPA, Region III during a site monitoring survey. Results of this sampling effort should be available for incorporation into the final Environmental Impact Statement. Future monitoring efforts will be planned if the site is designated. Monitoring plans should be easily implemented and will be consistent with site management plans.

6. Disposal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Winter currents at the site flow to the south-southwest and velocities that average 10 cm/sec. Summer surface currents flow to the west or northwest and are generally weaker than winter currents. Near-bottom summer currents average about 2 cm/sec and flow to the west. It has been established that a velocity of 35 cm/sec is needed to initiate movement (e.g., erosion) of fine grained sands; however, current velocities of this magnitude occur at the site only during winter storms. Flow in both seasons is highly wind direction dependent. Dispersal of dredged material during dumping operations was evaluated during a test dump during October 1981. No widespread dispersal of dredged material during disposal operations was shown to occur.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

A portion of the proposed Norfolk Ocean Disposal Site overlaps an area used for the disposal of dredged material from the Thimble Shoal and Cape Henry Channels prior to 1971. No cumulative environmental effects of the past dumping activities have been identified; benthic communities at the Norfolk Ocean Disposal Site are similar to those of surrounding areas. In addition, no unacceptable adverse impacts have been identified at the currently used Dam Neck Ocean Disposal Site.

8. Interference with Shipping, Fishing, Recreation, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean. (40 CFR 228.6(a)(8))

Use of this site is not expected to interfere with known shipping, recreation, mineral extraction, desalination, fish and shellfish activities, or areas of special scientific importance. Some short-term disruption of recreational fishing activities is possible in the immediate area of disposal activities. The proposed Norfolk Ocean Disposal Site is located in an area known to be frequented by herring (*Clupea harengus*), king mackerel (*Scomberomorus cavalla*), porgy (*Stenotomus chrysops*), windowpane flounder (*Scophthalmus aquosus*), bluefish (*Pomatomus saltatrix*), summer founder (*Paralichthys dentatus*) and is in the vicinity of an

area known to have harvestable quantities of sea scallop (*Placopecten magellanicus*). The area is approximately 35 nautical miles (64 kilometers) south of currently harvested Surf Clam (*Spisula solidissima*) beds. Surveys of the proposed Norfolk Ocean Disposal Site have found no known harvestable quantities of fish or shellfish. Industrial fisheries in the area are spiny dogfish (*Squalus acanthias*), Northern searobin (*Prionotus carolinus*) and spotted hake (*Urophycis regius*). No harvesting of industrial fish species is known to occur in this area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Previous investigations and baseline surveys show the proposed water and sediment quality and other environmental characteristics of the Norfolk Ocean Disposal Site to be typical of the mid-Atlantic region. Specific information regarding the water quality and ecology of the site is discussed in the EIS. In summary, the proposed site does not possess any unique characteristics that would preclude its designation and use as a disposal site. The designation and use of the Norfolk Ocean Disposal Site would not result in unacceptable environmental impacts on organisms that live near or migrate through the site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Based on information available on the community structure of the proposed site, no change in benthic species composition is expected. The communities currently defining the site are characteristic of the mid-Atlantic region. No change in substrate is anticipated if the site is used for dredge material that meets ocean disposal criteria. Past disposal activities adjacent to the proposed site and at the Dam Neck Ocean Disposal Site have not resulted in the development or recruitment of any nuisance species.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

An archeological survey of the area by side-scan sonar was conducted during late 1981. No sites of archeological interest that would be endangered by the proposed disposal operations were found. The survey and subsequent report was coordinated with the State Historical Preservation Officer.

E. Action

Based on the draft and Final EISs, EPA concludes that the site may appropriately be designated for use. The site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Norfolk Ocean Disposal Site as an EPA approved Ocean Dumping Site is being published as final rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region III.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, other than that already approved under section 103 of the Marine Protection, Research, and Sanctuaries Act, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Stanley L. Laskowski,

Acting Regional Administrator, EPA Region III.

In consideration of the forgoing, subchapter H of chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(94) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(94) Norfolk, Virginia, Dredged Material Disposal Site-Region III.
Location (center point):
Latitude–36°59'00" N.
Longitude–75°39'00" W.
Size: Circular with a radius of 7.4 kilometers(4 nautical miles).
Depth: Ranges from 13.1–26 meters.
Primary Use: Dredged material.
Period of use: Continuing use.
Restrictions: Site shall be limited to suitable dredged material which passed the criteria for ocean dumping.

[FR Doc. 93–15691 Filed 7–1–93; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB23

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Endemic Puerto Rican Ferns

AGENCY Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thelypteris inabonensis* (no common name), *T. verecunda* (no common name), and *T. yaucoensis* (no common name) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. These three species, all terrestrial ferns endemic to the island of Puerto Rico, are currently restricted to two or three localities each. The ferns are threatened by habitat destruction and modification, forest management practices, hurricane damage, restricted

distribution, and possible collection. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Thelypteris inabonensis, T. yaucoensis.*

EFFECTIVE DATE: August 2, 1993.

ADDRESSES. The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583).

SUPPLEMENTARY INFORMATION:

Background

Thelypteris inabonensis was described by Dr. George R. Proctor in 1985 from specimens collected at the headwaters of the Río Inabón, Toro Negro Commonwealth Forest, in the municipality of Ponce (Proctor 1989). In 1988, it was found near the summit of Cerro Rosa in the municipality of Ciales. No other localities for this species are known (Proctor 1991). *T. inabonensis* is rare and localized in wet montane forest at elevations of 1120 to 1250 meters. In the Toro Negro Commonwealth Forest, this species grows along a stream bank in sierra palm (*Prestoea montana*) forest, on the east bank of the Río Inabón. Thirty-four plants were counted in this locality (Proctor 1991). At the Cerro Rosa locality, approximately 12 plants were found in deeply-shaded humus near the summit area. The habitat of the second locality is montane mossy forest with sierra palms.

Thelypteris inabonensis is a terrestrial fern with an erect and slender (ca 0.5 cm diameter) rhizome that is clothed at the apex with numerous dark lustrous brown, and densely setulose scales. The fronds are erect-arching, up to 60 cm long. The stipes are 5–10 cm long and clothed with grayish acicular hairs, and they have numerous spreading scales similar to those of the rhizome. This species differs from all other Puerto Rican thelypterid ferns due to the presence of scales and acicular hairs on the rachis. The blades are narrowly elliptic, and up to 55 cm long. The species has 25–30 pairs of sessile pinnae, rounded at the apex, and with up to 7 pairs of simple veins. The tissue has numerous short, erect, acicular hairs and lacks glands. The small sori, which have a densely long-ciliate indusium, are located dorsally on veins.

The size and the beauty of this fern makes the species very attractive to collectors. Although *T. inabonensis* occurs within the Toro Negro Commonwealth Forest (managed by the Commonwealth Department of Natural Resources) where collecting is not permitted, the areas are difficult to monitor. Also, the sheltered areas of the Río Inabón were lightly affected by Hurricane Hugo in 1989. The fact that only 46 individuals are known to exist in only two localities, makes the species vulnerable to the loss of even one individual.

Thelypteris verecunda was described by Dr. George R. Proctor in 1985 from specimens collected from Barrio Charcas in the municipality of Quebradillas (Proctor 1989). Two other localities are known for the species Barrio Bayaney, Hatillo, and Barrio Cidral in the municipality of San Sebastian. In Quebradillas and San Sebastian, only one individual has been reported from each locality. In Barrio Bayaney, about 20 plants are known (Proctor 1988). All these localities are privately owned lands.

Thelypteris verecunda is a terrestrial fern with creeping, 2–3 mm thick rhizomes. The apex bears brown scales, 1 mm long and 0.5 mm wide. The species has dimorphic fronds which are clothed throughout with star-shaped hairs, and numerous, much longer simple hairs. The stipes or stalks are 1–1.5 cm long and 0.4–0.5 mm thick. The sterile blades are oblongate, 2.5–4 cm long, 1.5–2 cm broad, truncate at the base, and rounded at the broadly lobed apex. The sterile blades have 2–4 pairs of short-stalked, round-oblong, 0.8–1 cm long and 0.4–0.6 cm wide, entire pinnae with simple veins. The fertile blades are linear to attenuate, 13–15 cm long, 1.2–1.8 cm broad, and truncate at the base. The rachis bears a minute proliferous bud below the apex. These blades have 15–20 pairs of mostly rounded-oblong to oval, 0.3–0.4 cm wide, short-stalked, entire pinnae. The small and erect sori, which have a minute indusium, are located in an inframedial position, and bear a tuft of long, white, and simple hair.

The fact that this fern is very rare and is known from only three sites makes the species extremely vulnerable to the loss of any individual. Clearing or development of these privately owned areas would result in elimination of the species. The species could also be an attractive item for collectors.

Thelypteris yaucoensis was described by Dr. George R. Proctor in 1984 from specimens collected at Barrio Rubias in the municipality of Yauco (Proctor 1989). This species is also known from two other localities: Los Tres Picachos, Barrio Toro Negro in Ciales; and the summit area of Pico Rodadero, Barrio Sierra Alta in the municipality of Yauco. Approximately 65 individuals have been estimated in these 3 sites (Proctor 1988). This endemic fern is very rare, and is located in humus on steep, shaded rocky banks and ledges at high elevations (850–1200 meters) (Proctor 1989).

Thelypteris yaucoensis is a terrestrial fern with an erect, 0.5 mm thick rhizome, which is bearded at the apex with a tuft of brown, narrowly to broadly lance-attenuate, 5–8 mm long scales. The few fronds are 44–52 cm long and have lustrous light brown, glabrous, 18–22 cm long stipes. The blades are narrowly deltate to oblong, 25–31 cm long, 10–14 cm broad, acuminate at the apex, and truncate at the base. The rachis, costae and costules are more or less stellate-puberulous on both sides. This fern has 13–15 pairs of alternate, irregularly linear-oblong pinnae. The pinnae are mostly simple, with 5–6 pairs of veins and are all free, except for the lowest pairs which are more or less joined. This fern has inframedial to medial sori, which are ciliated with minute forked and 3-branched hairs and have small indusia often hidden by the sporangia.

T. yaucoensis is also located on privately owned land. Clearing or development of the areas would result in the elimination of the species. This species would be very attractive for collectors. The extreme rarity of this fern makes the species very vulnerable to the loss of any individual.

Thelypteris inabonensis, T. verecunda, and *T. yaucoensis* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species were subsequently included as category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review for plant taxa published in the **Federal Register** of February 21, 1990 (55 FR 6184). *Thelypteris inabonensis* and *Thelypteris verecunda* are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources. A proposed rule to list these three species as endangered was published on November 9, 1992 (57 FR 53309).

Summary of Comments and Recommendations

In the proposed rule and associated notifications, all interested parties were requested to submit factual reports of

information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were requested to comment. A newspaper notice inviting general public comment was published in The San Juan Star on November 29, 1992, and in El Nuevo Dia on November 30, 1992. Three letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources, Natural Heritage Division (PRNHD), supported the listing of *Thelypteris inabonensis* and *T. yaucoensis* as endangered species. In the case of *T. verecunda*, the PRNHD pointed out that Proctor (1989) discussed the possibility that this species is a hybrid between *T. abidita* and *T. reptans*. The PRNHD recommended postponement of the designation of this species as endangered until this uncertainty was clarified. The author of this taxon, Dr. George Proctor, was contacted by the Service to clarify this uncertainty. Dr. Proctor stated that he had only suggested that *T. verecunda* might possibly be a hybrid because *T. abdita* and *T. reptans* were present in the same area. He does not have any evidence (morphological or cytological) to establish that the species in question is a hybrid species. He strongly recommended the designation of *T. verecunda* as endangered, due the fact that the only known population (20 individuals) is located on privately owned land (Proctor, pers. comm.)

The U.S. Forest Service provided comments, but did not indicate either support or objection to listing the species.

A private citizen, Dr. Wayne R. Owen, supported the listing of the three fern species based on the best interest of the species and the communities in which they live.

Summary of Factors Affecting the Species

After the through review and consideration of all information available, the Service has determined that *Thelypteris inabonensis*, *T. verecunda*, and *T. yaucoensis* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thelypteris inabonensis* Proctor, *Thelypteris verecunda* Proctor, and *Thelypteris yaucoensis* Proctor are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Destruction and modification of habitat may be one of the most significant factors affecting the numbers and distribution of these three endemic ferns. Two of the species (*T. verecunda*, and *T. yaucoensis*) are known only from privately owned lands. The clearing or development of these areas would result in the elimination of these species. Although *T. inabonensis* occurs within a Commonwealth forest (Toro Negro Commonweath Forest), the small populations may be affected by forest management practices and collection. These three fern species are rate, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The extreme rarity of these species makes the loss of any individual even more critical.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these three species may be very attractive to collectors.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Thelypteris inabonensis*, *T. verecunda*, and *T. yaucoensis*, are not yet on the Commonwealth list. Federal listing will provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Probably the most important factor affecting *T. inabonensis*, *T. verecunda*, and *T. yaucoensis* in Puerto Rico is their limited distribution. In 1989, Hurricane Hugo lightly damaged the area where *Thelypteris inabonensis* is found.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Thelypteris inabonensis*, *T. verecunda*, and *T. yaucoensis* as endangered. The extreme rarity of these ferns makes the species very vulnerable to the loss of any plant. Only two populations of *T. inabonensis*, three populations of *T. verecunda*, and three populations of *T. yaucoensis* are known to occur. Collecting may severely impact these populations. Habitat modification can alter microclimatic conditions, and thus may dramatically affect these very rare and endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. Regulations found at 50 CFR part 424 state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for both reasons.

The number of populations of *Thelypteris inabonensis*, *T. verecunda*, and *T. yaucoensis* are so small that vandalism and collection could seriously affect the survival of these species. The size and the beauty of these ferns makes the species very attractive to collectors. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of take from such activities.

Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands, or (2) removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. With the exception of only

one site occurring in a Commonwealth forest, all of the sites for these ferns are found on privately owned land, and currently receive no protection under Commonwealth law. While listing under the Act increases the public's awareness of a species' plight, it can also increase the desirability of a species to collectors. Discovery and elimination of any of these plants could compromise the survival of the species. These ferns also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

No Federal actions are foreseen that would affect these ferns. In the unlikely event that Federal involvement should occur in the areas where these plants occur, the Service believes that the species can be protected without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 consultation process, as appropriate.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three fern species, as discussed above. Federal involvement that would adversely affect the species is not anticipated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Proctor, G.R. 1988. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389 pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Thelpteridaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•		•
Thelypteridaceae—Marsh fern family:						
Thelypteris inabonensis	None	U.S.A. (PR)	E	506	NA	NA
• •	•	•	•	•		•
Thelypteris verecunda	None	U.S.A. (PR)	E	506	NA	NA
Thelypteris yaucoensis	None	U.S.A. (PR)	E	506	NA	NA
• •	•	•	•	•		•

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-15502 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 920543-3056; I.D. #022593D]

RIN 0648-AE21

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement a resubmitted portion of Amendment 2 to the Summer Flounder Fishery Management Plan (Amendment 2) and to announce to the effective date of a requirement for annual reports from summer flounder dealers. This final rule implements a mandatory reporting requirement for owners of charter, party, and commercial vessels holding Federal permits for the summer flounder fishery, effective January 1, 1994. The intent of this revision is to replace a measure proposed in the earlier submission of Amendment 2 that was disapproved by the Secretary of Commerce (Secretary).

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Copies of the revised portion of Amendment 2 and the environmental impact statement/regulatory impact review for the original Amendment 2 may be obtained from John C. Bryson, Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this final rule should be sent to the Northeast Regional Director, 1 Blackburn Dr., Gloucester, MA 01930, and the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281-9324.

SUPPLEMENTARY INFORMATION: Amendment 2 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission. The Council submitted Amendment 2 to the Secretary for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove or partially disapprove fishery management plans or amendments based upon a determination of consistency with national standards and other applicable law. The Secretary announced disapproval of a provision of Amendment 2 that would have implemented a mandatory vessel logbook requirement by January 1, 1993. This disapproval was announced in the final rule to implement Amendment 2 (57 FR 57358, December 4, 1992).

The mandatory vessel logbook requirement was disapproved in Amendment 2 because NMFS determined that the summer flounder logbook requirement would be duplicative of existing reporting requirements. NMFS concluded than it should be consolidated into a coastwide mandatory vessel reporting system for fishing off the Mid-Atlantic and New England coasts, targeted for implementation in 1994. To be consistent with NMFS's plans to implement a coastwide vessel reporting system, the Council resubmitted the summer flounder logbook requirement to the Secretary for review under section 304(b)(3) with the provision that implementation is to occur by January 1, 1994.

The specific information elements the Council requested to be collected are: (1) The vessel name; (2) the vessel permit number; (3) date sailed; (4) date landed; (5) port landed; (6) area fished; (7) number of tows; (8) duration of fishing time or days actually fished; (9) the total amount in pounds/numbers of each species harvested; (10) the total amount in pounds/numbers discarded by species; (11) crew size; (12) date sold; (13) buyer (dealer); (14) number of anglers per trip for party/charter vessels; (15) and other items required by the Regional Director, Northeast Region (Regional Director).

Because the mandatory logbook requirement will partially supplant some existing voluntary information collections, the Regional Director will also collect the following additional information on the logbook: (1) Gear fished; (2) size/quantity of gear; (3) mesh size; (4) depth range fished; (5) average tow/set time; (6) Loran coordinates and (7) dealer permit number. This information is necessary for management of the resource.

Changes From the Proposed Rule to the Final Rule

Section 625.6(a)(2) contains a requirement that permitted summer flounder dealers fill out the employment information of the Annual Processed Products report. The Secretary announced approval of this requirement in the final rule for Amendment 2 (57 FR 57358; December 4, 1992) pending OMB approval, which was subsequently received (OMB 0648-0018). This rule also adds a clarification that the Annual Processed Products report must be filled out for the calendar year and submitted to NMFS and postmarked by February 10 of the following year.

Changes have been made in the final rule to clarify the intent of the regulations. In § 625.6, paragraphs (b)(1) and (c)(1) are changed by removing the word "daily" from the phrase "daily fishing log." In paragraphs (b)(1)(xvii) and (c)(1)(xiii) of § 625.6, "crew size" is

changed to "number of crew." In paragraphs (b)(2) and (c)(2) of § 625.6, the phrase "When to fill in the log" is changed to "When to fill in the fishing log." Also in paragraph (b)(2), the phrase "before landing any summer flounder" is changed to "before offloading has begun" to make it clearer when the fishing log reports must be filled in. In paragraphs (b)(3) and (c)(3) of § 625.6, a change is made in response to a comment to clarify that logbooks currently in use must be kept on board the vessel. Paragraphs (b)(4) and (c)(4) of § 625.6 have been changed to clarify that logbooks which have been filled in completely must be retained for one year and made available to an authorized officer upon request. In § 625.6 (b)(5) and (c)(5), the term "trip reports" is changed to "fishing log reports." Also in these two paragraphs, the report submission deadline is changed, in response to a comment, from "postmarked within 72 hours" to "postmarked within fifteen days." A clarification is also added in paragraphs (b)(5) and (c)(5) to ensure that negative reports are required when no trip is made or when no summer flounder are landed and that negative reports are to be made on a page of the fishing log. Section 625.6(c)(2) is also changed to reflect that the fishing log report must be filled in at the end of each fishing trip. In § 625.6(c)(3), the word operator is added to indicate that the owner or operator must produce reports for inspection upon request of an authorized officer.

Comments and Responses

NMFS received comments on the proposed rule from a fisherman, the East Coast Fisheries Foundation (ECFF) and the State of Connecticut Department of Environmental Protection (DEP). Specific comments are discussed and responded to below.

Comment: One commenter opposes the vessel reporting requirement because fishermen are already overburdened with reporting requirements imposed by state agencies and other federal agencies such as the U.S. Coast Guard (USCG), the Federal Communications Commission (FCC), and the Food and Drug Administration. He believes that the cumulative impact of these reporting burdens is unreasonable, and expresses concern that agencies do not coordinate their requirements. He stated that he is required to keep a log for the USCG and the FCC and that he keeps a personal log.

Response: The fishing industry is regulated by other state and Federal agencies that require different information for different purposes. Information collected by the Coast Guard is generally to ensure that safety and/or anti-pollution regulations are followed. None of the other agencies' information requirements will satisfy the need for information to manage the fishery, which includes information for biological, economic and social assessments as well as for compliance monitoring of quotas. NMFS is working toward consolidating current and future reporting requirements and, in fact, withdrew approval of this vessel reporting requirement in the earlier Council submission so that it could be incorporated into a coastwide vessel reporting system planned for 1994 for all species.

Comment: A commenter believes that the vessel reporting requirement is unnecessary and should be dropped. He believes that the information can be obtained through the sea sampling program or through individual state programs.

Response: Mandatory vessel reporting is especially important to corroborate the information submitted through mandatory dealer reports. This cross-check will improve accuracy and the ability to detect violations, making the system fair and enhancing the success of the resource management program. In addition, the vessel logbook provides an opportunity for vessel owners to ensure that information on their vessel, especially landings and performance, as well as their observations, are included in the database and considered during deliberation of future management systems.

Neither the sea sampling program nor individual state programs can satisfy the requirements for data necessary to manage the fishery. Individual state programs cannot provide the necessary information because the data must be collected throughout the range of the resource in a consistent manner for statistical analyses. Individual state programs are inconsistent among states and many states do not have collection programs.

The information to be supplied by the vessel report cannot be obtained through the sea sampling program due to the low level of coverage, i.e., less than 1 percent. A limited amount of sea sampling time is available to examine other issues and is not adequate to provide all of the data required for analyses of the summer flounder fishery.

Comment: One commenter believes the information collected has nothing to do with the biological management of summer flounder.

Response: The information to be collected on the vessel report is needed to provide managers and scientists with information to evaluate the condition of the resource, such as catch per unit of effort, and other assessment tools. Equally important, this information is necessary for fishery management purposes including quota monitoring, compliance monitoring, and to provide information on which to base future management measures or to evaluate the effectiveness of current measures.

Comment: Two commenters feel that the burden estimate of five minutes per response is too low. One commenter stated this was especially true for reporting discards on a per-tow basis. The commenters believe it will take an inordinate amount of time to weigh, count and tabulate catch information. One commenter cited the time it takes a sea sampler to perform this function. In addition, the commenters believe that much of the information will be inaccurate because fishermen will be tired at the end of a trip and will "just put something down." One commenter pointed to the fact that NMFS staff involved in developing this requirement do not have fishing experience. The commenters also object to the portion of the rule which requires reporting "other items required by the Regional Director," because it is too broad.

Response: The information provided on the fishing log is information that is collected in the course of fishing. NMFS does not believe that one has to be a fisherman to estimate the time required for this reporting, and remains convinced that most fishermen can provide basic trip and catch information in five minutes, even if it must be copied from other vessel records, such as the personal log generally kept by fishermen.

Discard information is not requested on a per-tow basis, but in most cases, at the end of the trip (unless the vessel changes gear or area during a trip requiring the change of page in the log). Discards are not required to be weighed or counted, only an estimate of pounds discarded is required. It is the responsibility of the fishermen to provide accurate information.

The general requirement for "other information required by the Regional Director" is meant to allow minor modifications in the reporting requirement during the 3-year OMB approval period. Substantive changes or additions will still require OMB clearance under the Paperwork Reduction Act.

Comment: The DEP commented that mandatory reporting by vessel owners should be considered only as a last

resort. However, if it is necessary, the number of reporting entries should be kept to a minimum. The commenter notes that the DEP system only requires 7 entries per day.

Response: NMFS agrees that the number of entries should be kept to a minimum. The vessel reporting requirement implemented by this rule requires 20 entries for each trip. The average length of a trip in the summer flounder fishery is 3 to 5 days. Therefore, the number of entries per day is actually less than the commenter's suggestion. In practice, the number of entries will be 20 every several days.

Comment: The DEP advised against requiring entries of discards because this information can only be collected accurately via sea sampling programs that utilize NMFS certified sea samplers. DEP further commented that data collected on a per-tow basis would also not be accurate unless a sea sampler were aboard. At the very least, caution should be used in interpreting such data.

Response: NMFS agrees that sea sampling programs provide the most accurate information on discards. However, until the extent of coverage of the program can be extended, estimates from fishermen are necessary.

Comment: DEP suggested a more general approach to vessel reporting. Rather than specifying each item that must be reported, the rule should state that a system will be developed that may include, but is not limited to, the items listed in § 625.6(b). This would allow flexibility to incorporate changes to the vessel report format that may result from ongoing discussions of data needs. The DEP recommends that mandatory reporting requirements for summer flounder be postponed until regional data collection programs can be redesigned and finalized. The DEP recommends extending the comment period to allow this redesign and planning phase.

Response: NMFS believes that an important aspect of compliance is providing clear instructions to the affected public. This mandatory reporting system requires compliance by regulation, and therefore, must be as explicit as possible in describing to the public exactly what information is required and when it must be submitted. Thus, the items to be reported and the submission deadlines are included in the **Federal Register**, which is available to the public. In addition, vessel owners will also receive specific notification regarding these regulatory requirements in a letter from the Regional Director. NMFS must balance the obligation to provide sufficient public notification against the consequent loss in flexibility.

The comment period cannot be extended because the Magnuson Act requires Secretarial approval or disapproval of a Council submitted FMP or amendment by a certain statutory deadline.

Comment: The ECFF commented that some of the information to be collected by the logbook duplicates other information collections and gave the example of loran coordinates and area fished.

Response: It is not NMFS' intention to collect both the loran coordinates and area fished. Instead, specific instructions accompanying the logbook will show that vessel operators may note either the area fished or the loran coordinates, depending on which is more convenient.

Comment: The ECFF believes there should be a single, efficient logbook for all fisheries. The commenter suggested alternative questions that could be asked on the vessel report such as: whether significant quantities of juvenile fish were discarded; whether the amount of discarding exceeded the quota; and other observations. The ECFF questions why size and quantity of gear are included because they do not seem appropriate for otter trawlers and questions whether "mesh size" applies to the codend.

Response: NMFS is working toward a single coastwide, multiple-fishery vessel logbook to collect efficiently information from resource users. NMFS will consider alternative suggestions on the elements to be included on the vessel log in the future. However, for the purposes of this rule, NMFS has opted to approve the design presented by the Council's amendment. NMFS expects changes in design to be made as other fisheries are added in the future.

Size and quantity of gear are included in anticipation of a single log that would apply to all fisheries and all types of gear.

The clarification that mesh size applies to the codend is made in this rule.

Comment: ECFF commented that the request for "crew size," if taken literally, would result in responses describing the height and weight of the crew on board.

Response: NMFS agrees with this comment. In order to obtain the information desired, the fishing log will request "number of crew."

Comment: ECFF commented that rather than requiring the fishing log to be completed before landing any summer flounder, the regulations should require it to be completed before the next trip. The change is proposed to relieve fishermen from the burden of completing the log "rough weather conditions and cramped quarters."

Response: With the exception of "information that is not yet known" (e.g., date sold, dealer name and dealer permit number), the fishing log must be completed before landing. While the "information that is not yet known" can be added to the log before starting the next trip, allowing the entire log to be completed in that timeframe would undermine the enforceability of the reporting requirement because compliance would be dependent upon the date of a future action and impossible to evaluate.

Comment: ECFF feels that the sections concerning fishing log "inspection" and "record retention" appear to contradict one another. They suggested that the wording should be revised to protect fishermen from being caught in a violation due to the contradiction.

Response: In response to this comment, NMFS has clarified the requirements for presenting the fishing log. A log which is in use must be available for inspection by an authorized officer during or after a trip and thus should be kept aboard the vessel. Logbooks which have been completely filled out must be made available upon request by an official officer but the place of storage is not specified.

Comment: ECFF believes that there are circumstances that would make it impossible to comply with the requirement for negative report to be filed within 72 hours of the end of the month. They pointed out that vessels leaving late in the month do not know for certain if they will land before or after the month's end, and if they land more than 72 hours after the month's end their negative report will be late.

Response: NMFS agrees with the commenter and has extended the submission deadline from 72 hours to 15 days after the end of the month.

Classification

The Secretary determined that the provisions this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, has taken into account the information, views, and comments received during the comment period.

The Council prepared an environmental impact statement (EIS) for Amendment 2, outlining the possible impacts on the environment as a result of this rule. The Assistant Administrator for Fisheries, NOAA (Assistant

Administrator) determined that this revision would not affect the scope or alter the analysis prepared in the EIS.

The Assistant Administrator has determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review (RIR) prepared for Amendment 2 that demonstrates negative net short-term economic benefits but positive long-term economic benefits to the fishery under the management measures. The revision to the Amendment contained in this rule does not alter the impacts analyzed in the RIR, which were not significant for the purposes of this Executive Order. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

This rule involves one collection-of-information subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0018). Vessel reports, §§ 625.6 (b) and (c), were approved by OMB as part of the proposed rule for Amendment 2 (control number 0648–0212). The revisions to §§ 625.6 (b) and (c) contained in this rule have also been approved by OMB under control number 0648–0212 and will become effective January 1, 1994. Public reporting burden for this collection is estimated to average 5 minutes per response. Send any comments regarding this burden estimate or any other aspect of this requirement, including suggestions for reducing the burden, to NMFS and OMB (see **"ADDRESSES"**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the analyses presented in the EIS/RIR for Amendment 2, which are not changed by this revision.

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Several state agencies responded that the measures are not inconsistent with their respective programs. Consistency is presumed for states that did not respond.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: June 28, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.6 is amended by revising paragraphs (a)(2), (b) and (c) to read as follows:

§ 625.6 Recordkeeping and reporting requirements.

(a) * * *

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on the form is voluntary. Reports for a given calendar year shall be submitted to: NMFS Statistics, 166 Water St., Woods Hole, MA 02543, and must be postmarked by February 10 of the following year.

* * * * *

(b) *Vessel owners issued a moratorium permit.*

(1) *Fishing log.* The owners of a vessel issued a moratorium permit that is not fishing as a vessel for hire, shall maintain, on board the vessel, an accurate fishing log for each fishing trip, on forms supplied by, or approved by, the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Mesh size (codend);
(ix) Area fished;
(x) Depth range fished;
(xi) Number of tows or sets;
(xii) Days fished;
(xiii) Average tow/set time;
(xiv) Loran coordinates;
(xv) Pounds kept by species;
(xvi) Pounds discarded by species;
(xvii) Number of crew;
(xviii) Date sold;
(xix) Dealer name;
(xx) Dealer permit number;
(xxi) Any other information required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that such logbooks are filled in, except for information such as required by paragraphs (b)(1) (xviii), (xix), (xx) of this section that is not yet known, before offloading has begun at the end of a fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee on forms supplied by, or approved by, the Regional Director postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip were made or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

(c) *Owners of party and charter boats.*

(1) *Fishing log.* The owner of any party or charter boat issued a permit under § 625.4 and carrying passengers for hire shall maintain, on board the vessel, an accurate fishing log for each charter or party fishing trip, on forms supplied by or approved by the Regional Director, showing at least:

(i) Vessel name;
(ii) Vessel permit number;
(iii) Date sailed;
(iv) Date landed;
(v) Port landed;
(vi) Gear fished;
(vii) Size/quantity of gear;
(viii) Area fished;
(ix) Depth range fished;
(x) Days fished;
(xi) Number and pounds kept by species;

(xii) Number and pounds discarded by species;

(xiii) Number of crew;

(xiv) Number of anglers;

(xv) Any other information required by the Regional Director.

(2) *When to fill in the fishing log.* Vessel owners shall ensure that all logbook information required in paragraph (c)(1) of this section is filled in for each fishing trip by the end of each fishing trip.

(3) *Inspection.* The owner or operator shall, immediately upon request, make the logbook currently in use available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the completed log, the owner shall retain a copy of each logbook and make them available upon request by an authorized officer.

(5) *Fishing log reports.* The owner shall submit fishing log reports to the Regional Director or an official designee on forms supplied by, or approved by, the Regional Director postmarked within 15 days of the last calendar day of the month during which the trip is landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip were made or summer flounder were landed during a month, a fishing log report so stating must be submitted and postmarked by the 15th of the following month.

* * * * *

[FR Doc. 93–15661 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–20–M

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50 CFR Part 646

[Docket No. 930115–3147; I.D. 112992A]

RIN 0648–AE89

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and technical amendment.

SUMMARY: NMFS establishes eight special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off the South Carolina coast and restricts fishing in these SMZs to hand-held, hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing (excluding powerheads). The intended effect of this rule is to promote orderly use of the fishery resources on and around the ARs, to reduce potential user-group conflicts, to maintain the socioeconomic benefits of the ARs to the maximum extent practicable, and to conform the regulations to current practice. In addition, as a technical amendment, NMFS removes language regarding verification by the Internal Revenue Service (IRS) of income or gross sales of fish documentation submitted in support of applications for Federal permits to engage in the wreckfish fishery off the southern Atlantic states.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs as SMZs, following Council recommendation to the Director, Southeast Region, NMFS.

ARs create fishing opportunities that would not exist otherwise and may increase biological production. They are expensive to construct and their benefits can be dissipated rapidly by certain types of fishing gear. Use of certain fishing gear that offers advantages over other gear may reduce significantly the improved fishing opportunities and, thus, may eliminate the incentive for the development of ARs. The intent of SMZs, and associated gear requirements, is to preserve the fishing opportunities of ARs and the incentive to establish them.

The South Carolina Wildlife and Marine Resources Department requested that the Council establish SMZs around eight ARs in which fishing would be limited to hand-held, hook-and-line gear, and spearfishing (excluding powerheads). The ARs are in the EEZ off South Carolina on an expensive shelf area that has large areas devoid of any hard or live bottom. Prior to establishment of the ARs, these areas did not support any significant fisheries. In fact, these large barren areas limited the development of recreational fishing. The ARs provide substrate for invertebrates and juveniles of game fish. The increased substrate leads to increased biological productivity although it is not possible to quantify the increase. The small fish, which inhabit ARs, attract game fish; hence, fishing opportunities are increased.

The procedural requirements of the FMP for designation of ARs as SMZs, the criteria required by the FMP to be evaluated for designation of ARs as SMZs, and evaluation of those criteria were contained in the proposed rule (58 FR 13732, March 15, 1993) and are not repeated here.

Comments and Responses

Two comments were received on the proposed rule.

Comment: A professional diver reported that he had used a powerhead in six of the eight proposed SMZs during the last 4 years and objected to the proposed exclusion of powerheads. He suggested that prohibiting the use of a powerhead for amberjack in the SMZs is equivalent to locking the barn door after the horse was stolen. For the conservation of amberjack, he suggested prohibiting the use of hook-and-line gear for amberjack off south Florida during the spawning season, which, according to the commenter, extends from the third week in April through mid-June.

Response: The Council concluded that the use of powerheads in SMZs would discourage the construction of new ARs because only a few individuals would gain most of the benefits. That is, a few individuals would have an excessive share of the total catch of fish produced or aggregated by the ARs. Commercial fishermen may continue to use the SMZs provided they use legal gear, which includes spear guns, and hook-and-line gear. The Council believes this rule will reduce conflicts among users and will distribute benefits to a larger number of fishermen. NMFS concurs.

The Council chose to limit the harvest of amberjack during April, but not to close the entire fishery. The commenter's suggestion may be considered by the Council if additional conservation measures are necessary.

Comment: The Center for Marine Conservation (Center) supported the proposed rule—with reservations. The Center notes that no conclusive evidence exists that ARs increase fish populations, rather than merely concentrating fish populations, and that protection of SMZs may contribute to increased fishing pressure on natural reefs. The Center encouraged the Council to protect larger natural reef habitats, possibly through the establishment of marine fishery reserves.

Response: The Council held extensive public hearings on the concept of

marine fishery reserves. Because of public opposition to the concept of marine fishery reserves, as well as a lack of scientific information concerning the quantitative effects of reserves, the Council deferred action.

Technical Amendment

The regulations at 50 CFR 646.4(a)(2) specify that for a person to fish for wreckfish in the EEZ, possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ, a vessel permit for wreckfish must be issued to the vessel and be on board. To obtain a permit, the applicant must certify that more than 50 percent of his or her earned income must derived from commercial, charter, or headboat fishing or his or her gross sales of fish were more than $20,000 during one of the 3 calendar years preceding the application. The Director, Southeast Region, NMFS, requires the applicant to provide forms and schedules from his or her income tax return in support of the stated earned income/gross sales. The regulations at 50 CFR 646.4(c)(3) state, "Copies of income tax forms and schedules and other required documentation are treated as confidential, but may be released to and verified by the Internal Revenue Service or other appropriate authorities." The language regarding release to and verification by IRS is removed to conform to current practice.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review for this action, which concludes that the costs or negative impacts associated with the proposed designation of additional SMZs are insignificant compared to the benefits associated with SMZ status.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because few commercial fishermen depend on the artificial reef sites and the negative economic effects would be minimal.

The Southeast Regional Office, NMFS, prepared an environmental assessment (EA) for this action. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this final rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendments and their consistency determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 28, 1993

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.4, the last sentence of paragraph (c)(3) is revised to read as follows:

§ 646.4 Permits and fees.

* * * * *

(c) * * *

(3) * * * Copies of income tax forms and schedules and other required documentation are treated as confidential; however, documents other than income tax forms and schedules may be released to and verified by appropriate authorities.

* * * * *

3. In § 646.26, new paragraphs (a)(22) through (a)(29) are added and paragraph (c)(1) introductory text and the first sentence of paragraph (c)(4) are revised to read as follows:

§ 646.26 Area limitations.

(a) * * *

(22) *Little River Offshore Reef:* The area is bounded on the north by 33°42.10′ N. latitude; on the south by 33°41.10′ N. latitude; on the east by 78°26.40′ W. longitude; and on the west by 78°27.10′ W. longitude.

(23) *BP–25 Reef:* The area is bounded on the north by 33°21.70′ N. latitude; on the south by 33°20.70′ N. latitude; on the east by 78°24.80′ W. longitude; and on the west by 78°25.60′ W. longitude.

(24) *Vermilion Reef:* The area is bounded on the north by 32°57.80′ N. latitude; on the south by 32°57.30′ N. latitude; on the east by 78°39.30′ W. longitude; and on the west by 78°40.10′ W. longitude.

(25) *Cape Romaine Reef:* The area is bounded on the north by 33°00.00′ N. latitude; on the south by 32°59.50′ N. latitude; on the east by 79°02.01′ W. longitude; and on the west by 79°02.62′ W. longitude.

(26) *Y–73 Reef:* The area is bounded on the north by 32°33.20′ N. latitude; on the south by 32°32.70′ N. latitude; on the east by 79°19.10′ W. longitude; and on the west by 79°19.70′ W. longitude.

(27) *Eagles Nest Reef:* The area is bounded on the north by 33°01.48′ N. latitude; on the south by 32°00.98′ N. latitude; on the east by 80°30.00′ W. longitude; and on the west by 80°30.65′ W. longitude.

(28) *Bill Perry Jr. Reef:* The area is bounded on the north by 33°26.20′ N. latitude; on the south by 33°25.20′ N. latitude; on the east by 78°32.70′ W. longitude; and on the west by 78°33.80′ W. longitude.

(29) *Comanche Reef:* The area is bounded on the north by 32°27.40′ N. latitude; on the south by 32°26.90′ N. latitude; on the east by 79°18.80′ W. longitude; and on the west by 79°19.60′ W. longitude.

* * * * *

(c) * * *

(1) In SMZs specified in paragraphs (a)(1) through (a)(18) and (a)(22) through (a)(29) of this section.

* * * * *

(4) In the SMZs specified in paragraphs (a)(1) through (a)(10) and

(a)(22) through (a)(29) of this section, a powerhead may not be used to take a fish in the snapper-grouper fishery. * * *

[FR Doc. 93–15742 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 658

[I.D. 060793A]

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Adjustment of the ending date of the Texas closure.

SUMMARY: NMFS announces an adjustment of the ending date of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. This year the closure began on May 15, 1993, but because initial biological data indicate that brown shrimp leaving the Texas estuaries will have reached the desired size by July 6, the ending date is changed to this earlier date. The Texas closure is intended to: Prohibit the harvest of brown shrimp during their major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size; and prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 30 minutes after sunset, May 15, 1993, to 30 minutes after sunset, July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified at 50 CFR 658.25(b)(1) indicates that an early ending of the Texas closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicates that ending the closure on July 6, 1993, will provide adequate protection of small brown shrimp emigrating from the Texas estuaries.

Accordingly, the time and date at 50 CFR 658.25(a) for ending the Texas closure is changed from 30 minutes after sunset, July 15, 1993, to 30 minutes after sunset on July 6, 1993. During the closure, the area described at 50 CFR 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom (183–m) depth contour. The waters of Texas are also closed during this period.

Classification

This action is authorized by 50 CFR 658.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 25, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15738 Filed 6–29–93; 3:19 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 062893A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for thornyhead rockfish to all gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the thornyhead rockfish total allowable catch (TAC) in the GOA.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), June 28, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the thornyhead rockfish TAC for the GOA was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 1,062 mt (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the thornyhead rockfish TAC in the GOA soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 900 mt, with consideration that 162 mt tons will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for thornyhead rockfish in the GOA, effective from 12 noon, A.l.t., June 28, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15646 Filed 6–28–93; 4:59 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the "other red rockfish" target species category in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the "other red rockfish" total allowable catch (TAC) in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries

Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the "other red rockfish" TAC for the BS was established by the final groundfish specifications (58 FR 8703, February 17, 1993) as 1,020 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the "other red rockfish" TAC in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 920 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in the BS. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for "other red rockfish" in the BS effective from 12 noon, A.l.t., July 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15647 Filed 6–28–93; 4:59 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–62–AD]

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111 series airplanes. This proposal would require repetitive inspections to detect breakage of the rivet heads at a certain skin-to-frame junction of the fuselage and replacement of discrepant rivets. This proposal would also require eventual replacement of the currently installed rivets with high-strength bolts; when accomplished, this replacement would terminate the need for the proposed repetitive inspections. This proposal is prompted by test reports of fatigue-related damage found on the rivet heads at a certain skin-to-frame junction of the fuselage. The actions specified by the proposed AD are intended to prevent loss of structural integrity of the fuselage.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320–111 series airplanes. The DGAC advises that during fatigue testing, after 48,000 simulated flights, fatigue-related damage was found on the forward fuselage on two rivet heads at the junction between frame 15 and the skin, between stops 3 and 7. Fatigue-related damage in this area, if not detected and corrected in a timely manner, could result in loss of structural integrity of the fuselage.

Airbus Industrie has issued Service Bulletin A320–53–1069, dated August 17, 1991, that describes procedures for external detailed visual inspections to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–198–027(B), dated September 30, 1992, in order to assure the continued airworthiness of these airplanes in France.

Airbus Industrie has also issued Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, that describes procedures for replacement of the currently installed rivets with high-strength titanium Hilite bolts. These titanium Hilite bolts are manufactured using a roll-hardening process, which results in greater strength under the head of the bolts than in the rivets. This modification (Modification 20774) was installed during production on airplanes having serial numbers 002, 003, 004, and 013 and subsequent. This service bulletin has been revised by Change Notice 1.A., dated October 12, 1992, that clarifies that the inspections described in referenced Service Bulletin A320–53–1069 are mandatory. The DGAC has not classified this service bulletin or change notice as mandatory.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive external detailed visual inspections to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7. This proposal would also require eventual replacement of the currently installed rivets with high-strength bolts; when accomplished, this replacement would terminate the need for the proposed repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Currently, there are no affected Model A320–111 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 17 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. The cost of required parts would be $1,404. Based on these figures, the total cost impact of this AD would be $2,339 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–62–AD.

Applicability: Model A320–111 series airplanes; serial numbers 005 through 012, inclusive, on which Modification 20774, as described in Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within the next 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings, perform an external detailed visual inspection to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7, in accordance with Airbus Industrie Service Bulletin A320–53–1069, dated August 17, 1991.

(1) If no breakage is detected on any rivet head: Prior to the accumulation of 22,000 total landings, or within 180 days after the effective date of this AD, whichever occurs later, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(2) If breakage is detected on fewer than 2 rivet heads on each side: Within the next 100 landings after discovery of breakage, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(3) If breakage is detected on 2 or more rivet heads on either side: Prior to further flight, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(b) Replacement of all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15682 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ASW–50]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C and TH–55A helicopters, that currently requires repetitive inspection and replacement of certain lower belt drive pulley bearings (pulley bearings). This action would retain the present AD requirements and would require for another pulley bearing, part number (P/N) 269A5050–80, the same life limit of 1,800 hours' time-in-service and the same inspections as required by the current AD. This proposal is prompted by the introduction of an alternate pulley bearing with improved

lubrication that still requires the same life limit and repetitive inspections as required for the earlier bearings. The actions specified by the proposed AD are intended to prevent failure of the pulley bearings that could result in loss of transmission drive power to the rotor systems and subsequent loss of control of the helicopter.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–50, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Propulsion Branch, ANE–174, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791–7421, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may change in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–50." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–50, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

On January 4, 1980, the FAA issued AD 80–02–14, Amendment 39–3668 (45 FR 3251, January 17, 1980), to require replacement of all lower belt drive pulley bearings (pulley bearings), part number (P/N) 269A5050–57, that have accumulated 1,800 or more hours' time-in-service; to require a one-time inspection of the pulley bearing installations; and thereafter, to require a repetitive inspection of the lower pulley bearings at intervals of 300 hours' time-in-service. That action was prompted by reports of bearing malfunctions, which could result in a loss of drive power to the main and tail rotor systems. The requirements of that AD are intended to prevent failure of the pulley bearings that could result in loss of transmission drive power to the rotor systems and subsequent loss of control of the helicopter.

Since the issuance of that AD, Schweizer Aircraft Corporation informed the FAA that in October 1983, Hughes Helicopters, Inc. introduced into service an alternate design pulley bearing, P/N 269A5050–80, that is mechanically the same as the earlier design pulley bearing, P/N 269A5050–57. The aircraft manufacturer recently advocated that the requirements imposed by AD 80–02–14 should also be imposed on pulley bearing, P/N 269A5050–80, because of the similiarity between the bearings. The FAA has evaluated these conditions, concurs with the manufacturer, and proposes that the inspection and service life requirements of AD 80–02–14 should also apply to pulley bearings, P/N 269A5050–80.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 80–02–14 to require a one-time inspection of the pulley bearing installation, repetitive inspections of the pulley bearings, and a replacement time for pulley bearings, P/N 269A5050–80, as well as P/N 269A5050–57.

The FAA estimates that 700 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1½ work hours' per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts, if needed, would cost approximately $635 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $168,875 each year assuming 175 helicopters would need new parts each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Amendment 39–3668 (45 FR 3251, January 17, 1980) and by adding a new airworthiness directive (AD), to read as follows:

Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Docket No. 92–ASW–50. Supersedes AD 80–02–14, Amendment 39–3668.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, with lower belt drive pulley bearings installed, part number (P/N) 269A5050–57 or 269A5050–80, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the lower belt drive pulley bearings (pulley bearings), loss of power to the rotor systems, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours' time-in-service after the effective date of this AD, replace all pulley bearings, P/N 269A5050–57 or 269A5050–80, that have accumulated 1,750 or more hours' time-in-service. For pulley bearings that have accumulated less than 1,750 hours' time-in-service on the effective date of this AD, replace these pulley bearings on or prior to attaining 1,800 hours' total time-in-service. If replaced with pulley bearings, P/N 269A5050–57 or 269A5050–80, the repetitive inspection requirements of paragraph (d) of this AD are applicable.

Note: The following paragraphs of the AD, relative to bearing retention system inspection, cover two systems of retention. At delivery all Model 269A, 269A–1, 269B, TH–55A, and certain 269C helicopters, serial numbers 1 through 589, were equipped with an "H" frame with sheet metal lower bearing straps, P/N 269A5463. Model 269C helicopters, serial numbers 590 and subsequent, were equipped with machined lower bearing caps that are part of a 269A5573–11 "H" frame assembly. Paragraph (b) concerns the sheet metal straps and paragraph (c) concerns the machined caps.

(b) Within the next 50 hours' time-in-service after the effective date of this AD, on helicopters equipped with sheet metal lower bearing straps, P/N 269A5463—

(1) Inspect the pulley bearings in accordance with paragraphs a. through f., Part 1 of Schweizer Aircraft Corporation or Hughes Helicopters, Inc. Service Information Notice (SIN) N–146.2, dated December 7, 1979, and;

(2) Shim bearing straps in accordance with paragraph h.(2), Part 1. of SIN N–146.2, dated December 7, 1979.

(c) Within the next 50 hours' time-in-service after the effective date of this AD, on helicopters equipped with machined lower pulley bearing caps (caps) that are part of a 269A5573–11 "H" frame assembly, inspect caps and frame assembly lower bearing bore for out-of-roundness in accordance with paragraphs l. through p., Part 1 of Schweizer Aircraft Corporation or Hughes Helicopter, Inc. SIN N–164, dated December 7, 1979.

(1) If out-of-roundness exceeds 0.001 inch Total Indicator Reading (T.I.R.), reverse the caps and repeat the inspections of paragraph (c) of this AD for both caps.

(2) If out-of-roundness exceeds 0.001 inch T.I.R. after reversing and reinspecting the caps, replace both caps with two lower bearing straps, P/N 269A5463, in accordance with paragraph r., Part 1 of SIN N–164, dated December 7, 1979.

(d) Within 300 hours' time-in-service after accomplishing paragraphs (b) or (c) of this AD, and thereafter at intervals not to exceed 300 hours' time-in-service from the last inspection, inspect the pulley bearings in accordance with paragraph a. through e., Part III of SIN N–164, dated December 7, 1979.

(e) Prior to return to service of any helicopter equipped with a replacement "H" frame assembly, accomplish the inspections of paragraphs (b) or (c) of this AD as appropriate.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 21, 1993.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–15723 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91-ASW-21]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214B and 214B-1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc., (BHTI) Model 214B and 214B-1 helicopters. This proposal would require establishing a new mandatory retirement or service life on the main rotor pillow block bearing bolts (also called flapping bearing bolts). It would further require recording takeoffs and frequent high-power events such as repeated heavy lift (RHL) external load operations. This proposal is prompted by tests and analyses that reveal fatigue damage accrues more rapidly during frequent RHL and ground-air-ground operations. The actions specified by the proposed AD are intended to prevent fatigue failure of the main rotor pillow block bearing bolts, that could result in loss of the main rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-21, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc. (BHTI), P.O. Box 482, Attention: Customer Support, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193-0170, telephone (817) 624-5168, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-21." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ASW-21, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to BHTI Model 214B and 214B-1 helicopters. Recent BHTI evaluations indicate that BHTI Model 214B and 214B-1 helicopters used in repeated heavy lift (RHL) external load operations sustain more lifts-per-hour than originally anticipated during type certification. These frequent high-power events cause fatigue damage to accrue to the main rotor pillow block bearing bolts (bolts), part number (P/N) 20-057-12-48D and 20-057-12-50D, more rapidly than was originally anticipated. Further, these evaluations by the FAA and BHTI indicate that the Model 214B and 214B-1 bolts should have a service life of 15,000 high-power events, or 2,500 hours' time-in-service, whichever occurs first. A high-power event is defined as either a takeoff or an external load lift. This condition, if not corrected, could result in failure of the bolts, loss of the main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved BHTI Alert Service Bulletin (ASB) No. 214-91-46, Revision A, dated October 8, 1992, that describes procedures for establishing a new mandatory retirement or service life on the main rotor pillow block bearing bolts, and recording takeoffs and frequent high-power events such as RHL external load operations.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the establishment of a mandatory retirement or service life of 15,000 high-power events or 2,500 hours' time-in-service, whichever occurs first, for the bolts, P/N 20-057-12-48D and 20-057-12-50D. The proposed AD would also require recording takeoffs and high-power events such as external load operations.

The FAA estimates that 54 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 25.5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $260 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $89,775 each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 91-ASW-21.

Applicability: Model 214B and 214B-1 helicopters, certificated in any category.

Compliance: Required within 100 hours' time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the main rotor pillow block bearing bolts (also called flapping bearing bolts), part numbers (P/N) 20-057-12-48D and 20-057-12-50D, which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a historical maintenance service record, for the main rotor pillow block bearing bolts (bolts), P/N 20-057-12-48D and 20-057-12-50D.

(b) Determine the time-in-service on the bolts as follows:

(1) For bolts that do not have a record of hours time-in-service, calculate a base time-in-service and a base number of high-power events using 900 hours' time-in-service and 5,400 high-power events for each year the bolts have been installed. Prorate for a partial year. High-power events are defined as takeoffs or external load lifts such as fire-fighting by dumping water, logging, or other similar external cargo operations.

(2) For bolts that have a record of hours time-in-service, record the high-power events, as follows:

(i) Record the total number of high power events, if known;

(ii) If the number of high-power events is not known, multiply the hours time-in-service by 6 to determine the high-power events to be recorded.

(c) Replace the bolts according to the following:

(1) Within the next 100 hours' time-in-service or the next 600 high-power events, remove from service those bolts with either 2,400 or more hours' time-in-service, or more than 14,400 high-power events as of the effective date of this AD.

(2) On or before attaining either 2,500 hours' time-in-service or 15,000 high-power events, whichever comes first, remove from service those bolts with less than either 2,400 hours' time-in-service or 14,400 high-power events as of the effective date of this AD.

Note: This AD paragraph, in effect, changes the present Airworthiness Limitations Section of the Model 214B and 214B-1 Maintenance Manual to require a 2,500 hours' time-in-service or 15,000 high-power events service life, whichever occurs first, for the bolts.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193-0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–15724 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–52–AD]

Airworthiness Directives; Corporate Jets, Limited, Model DH/HS/BH/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets, Limited, Model DH/HS/BH/BAe 125 series airplanes. This proposal would require a one-time functional test of the diodes located in the engine fire extinguisher systems to verify proper operation of the diodes, and replacement of any defective diode. This proposal would also require that all test results, positive or negative, be reported to the manufacturer. This proposal is prompted by reports of undetected failures of certain diodes in the engine fire extinguisher systems. The actions specified by the proposed AD are intended to prevent failure of the engine fire extinguisher systems.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–52–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets, Limited, Model DH/HS/BH/BAe 125 series airplanes. The CAA advises that failed (short circuit) blocking diodes have been detected during routine maintenance on certain of these airplanes. These diodes are associated with the "EXT FIRED" (BOTTLE GONE) indicators in the engine fire extinguishing circuit. The cause of these failures has not been determined. Failure of the diodes may not be detected readily; therefore, deployment of extinguishing agent to both engines, rather than only to a selected engine, could occur. Faulty deployment of the extinguishing agent may reduce the concentration of the agent to levels below that required to extinguish an engine fire. Undetected failed diodes could prevent the engine fire extinguishing system from extinguishing an engine fire.

Corporate Jets, Limited, (a subsidiary of British Aerospace having responsibility for Model 125 series airplanes) has issued Service Bulletin S.B. 26–33, dated December 8, 1992, that describes procedures for conducting a one-time functional test of the diodes located in each engine fire extinguisher system to verify proper operation of the diodes, and replacement of any defective diode. The service bulletin includes a statement indicating that, for the Model 125 series airplanes, Corporate Jets, Limited, is updating the Aircraft Maintenance Manual to include functional tests of the diodes in the engine fire extinguisher system as a normal maintenance item. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time functional test of the diodes located in the engine fire extinguisher systems to verify proper operation of the diodes, and replacement of any defective diode. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also require that all test results, positive or negative, be reported to the manufacturer.

Repetitive functional tests of the diodes are not included in the proposed AD because the FAA has been advised by Corporate Jets, Limited, that the diodes have been added as a routine functional test item in the Aircraft Maintenance Manual for Model 125 series airplanes. Therefore, repetitive functional tests will be performed in accordance with normal maintenance practices. The proposed one-time functional test, however, would assure that any undetected failed diode is identified and replaced in a timely manner.

The FAA estimates that 440 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $72,600, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Corporate Jets, Limited, (Formerly British Aerospace, Hawker Siddeley Aviation, and De Havilland Aircraft Co., Ltd): Docket 93–NM–52–AD.

Applicability: Model DH/HS/BH/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire extinguisher systems, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct a one-time functional test of the diodes located in each engine fire extinguisher system to verify proper operation of the diodes, in accordance with Corporate Jets, Limited, Service Bulletin S.B. 26–33, dated December 8, 1992.

(b) If any diode is found to be defective, prior to further flight, replace the defective diode in accordance with Corporate Jets, Limited, Service Bulletin S.B. 26–33, dated December 8, 1992.

(c) Within 10 days after accomplishing the functional test required by paragraph (a) of this AD, report all test findings, positive or negative, by mail or fax message to the following address: Service Support Manager, Corporate Jets, Limited, 3 Bishop Square, St Albans Road West, Hatfield, Hertfordshire, AL10 9NE, England; fax 011–44–707 253959, or 011–44–707 252367. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15683 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–78–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings and installation of a retainer ring, if necessary. This proposal is prompted by a report of a missing retainer ring in the rudder (brake) pedal. The actions specified by the proposed AD are intended to prevent reduced braking authority and reduced directional control of the airplane while it is on the ground.

DATES: Comments must be received by August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that one operator has reported that, upon starting to brake after touchdown, the pilot felt the left rudder (brake) pedal shift under his foot. A subsequent inspection revealed that the cause of the shifting rudder (brake) pedal was attributed to a missing retainer ring; these retainer rings hold the rudder (brake) pedal bearing in place. A missing retainer ring on either the pilot's or first officer's rudder (brake) pedal assembly could result in a loose rudder (brake) pedal, which could result in reduced braking authority and reduced directional control of the airplane while it is on the ground.

Fokker has issued Service Bulletin SBF100–27–047, Revision 1, dated February 9, 1993, that describes procedures for a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings. The service bulletin also describes procedures for installation of a retainer ring, if the retainer ring is missing or installed incorrectly. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92–087, dated September 25, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings, and the installation of a retainer ring if the retainer ring is missing or installed incorrectly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,575, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–78–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11407, inclusive, 11409, and 11410; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking authority and reduced directional control of the airplane while it is on the ground, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection of the rudder (brake) pedal assemblies, to verify installation of retainer rings, part number (P/N) MS16624–1075, in accordance with Fokker Service Bulletin SBF100–27–047, Revision 1, dated February 9, 1993.

(1) If all of the retainer rings are installed correctly, no further action is required by this AD.

(2) If any retainer ring is not installed, or is not installed correctly, prior to further flight, install retainer ring, P/N MS16624–1075, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 28, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15681 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 412

Trade Regulation Rule: Discriminatory Practices in Men's and Boys' Tailored Clothing Industry

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: The Federal Trade Commission announces its intention to begin a rulemaking proceeding for the trade regulation rule concerning discriminatory promotional allowances in the men's and boys' tailored clothing industry ("Tailored Clothing Rule" or "Rule"). The proceeding will consider whether the Tailored Clothing Rule should remain in effect without changes or should be repealed. The Commission has not relied on the Tailored Clothing Rule in recent years and believes that the circumstances underlying the Rule may have changed. In addition, the Commission recently promulgated revised guidelines on the subject of promotional allowances that may better reflect the requirements of the Robinson-Patman Act. Accordingly, this industry-specific rule may no longer serve a useful purpose. The Commission invites public comment on how the Tailored Clothing Rule currently affects manufacturers, retailers, consumers, and others.

Because the Rule contains no information collection requirements, the Commission is not specifically seeking comments on whether the Rule imposes unnecessary recordkeeping and disclosure requirements within the meaning of the Paperwork Reduction Act.

DATES: Written comments will be accepted until August 2, 1993.

ADDRESSES: Written comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned "NPR Comment—Tailored Clothing Rule."

FOR FURTHER INFORMATION CONTACT: Neil Averitt, Esq., Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, Washington, DC 20580 (202) 326–2885.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is published pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.;* the Robinson-Patman Act, 15 U.S.C. 13; the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21 *et seq.;* and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

This authority permits the Commission to promulgate, modify and repeal rules that define methods of competition that are unfair within the meaning of section 5(a)(1) of the FTC Act, including methods of competition that would also violate the Robinson-Patman Act.

The Tailored Clothing Rule states that promotional allowances to sellers of men's clothing will be presumed not to have been on a proportionately equal basis unless they are made in accordance with the terms of a written plan that has been supplied to all the competing sellers. The Rule was adopted on October 18, 1967, and became effective on April 1, 1968.

Part B—Objectives and Analysis

The objective of this rulemaking proceeding is to determine whether the Commission's Tailored Clothing Rule should be repealed. In this connection the Commission seeks evidence as to whether this industry-specific rule is a useful and efficient means of law enforcement. At least preliminarily, it does not appear that the Tailored Clothing Rule has been of significant value. The Commission also notes that, subsequent to the initial publication of the Tailored Clothing Rule, it published general guidelines on the subject of discriminatory promotional allowances. See Guides for Advertising Allowances and Other Merchandising Payments and Services (the "Fred Meyer Guides"), 16 CFR part 240. These new guidelines may have further diminished the need for industry-specific rules.

The Commission seeks evidence on the question of whether there are benefits from the Tailored Clothing Rule, and, if so, whether those benefits are greater than its costs, in order to assist in reaching a determination on this matter.

The Commission is undertaking this rulemaking proceeding as part of its ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact. Based on the information currently in its possession, the Commission believes that the Tailored Clothing Rule no longer serves the public interest and should be repealed.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Rule or leaving it in effect in its present form.

Part D—Requests for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Tailored Clothing Rule. A comment that includes the reasoning or basis for a proposition is likely to be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted along with the comments. The issues identified in the list below are intended as suggestions and should not be construed as a limitation on the issues or on the scope of public comment.

Questions

(1) In light of experience, is it reasonable to presume that allowances are improper if they are not made pursuant to a written plan?

(2) Have changing technologies or evolving business practices brought new methods of communicating with retailers—other than through a written plan—that clothing manufacturers might prefer to use if they were free to do so?

(3) Do members of the men's and boys' tailored clothing industry refer to the present Rule for guidance on avoiding discriminatory promotional allowances?

(4) Is there a need for guidance that is specific to the tailored clothing industry, or could sufficiently useful guidance be found in the more general Fred Meyer Guides?

(5) What are the costs and benefits of the Tailored Clothing Rule?

(6) Should the Rule be kept in effect or should it be repealed?

Communications with Commissioners' offices

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the treatment described in this paragraph. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, other than oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any responsive oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any responsive oral communications relating to such oral communications.

Part E—Initial Regulatory Flexibility Analysis

The following discussion constitutes the Commission's Initial Regulatory Analysis of the proposed repeal pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Act requires an analysis of the anticipated impact of the proposed Rule repeal on small business. The analysis must contain, as applicable, a description of the reasons why action is being considered; the objectives of and legal basis for the proposed rule change; the class and number of small entities affected; the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and existing federal rules which may duplicate, overlap or conflict with the proposed rule; and any significant alternatives to the proposed rule that may accomplish its objectives and, at the same time, minimize its impact on small entities.

The reasons why action is being considered and the objectives of and legal basis for the proposed repeal of the Rule have been explained elsewhere in this Notice.

The Commission believes that repealing the Tailored Clothing Rule will not have any meaningful impact on small business. The Commission has not applied the Rule in recent years, and as a practical matter it is likely that firms have looked to the Fred Meyer Guides for guidance on the question of providing written plans for promotional allowances. The guidance offered by the Fred Meyer Guides concerns the same statutory provisions as the Rule, and for that reason it is unlikely that repeal of the Rule will have significant impact. Thus it is unlikely that repeal of the Rule will affect small entities.

Repeal of the Rule will remove any reporting, recordkeeping or other compliance requirements of the Rule.

The Commission is not aware of any existing federal rules that would conflict with, duplicate, or overlap the proposed repeal of the Rule.

The only significant alternative to repeal of the Rule is to keep it in its present form. For the reasons stated above, however, the Rule no longer appears to serve a useful purpose. Under these circumstances, keeping the Rule may be contrary to the interests of efficient public administration.

Part F—Paperwork Reduction Act

The Tailored Clothing Rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Part G—Preliminary Regulatory Analysis

The Commission does not believe that repeal of the Tailored Clothing Rule will have an economic impact sufficiently large to require a final regulatory analysis as described in section 22 of the Federal Trade Commission Act, 15 U.S.C. 57b–3.

Part H—Proposed Repeal of Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41 *et seq.*; the Robinson-Patman Act, 15 U.S.C. § 13; the provisions of Part 1, Subpart C of the Commission's Procedures and Rules of Practice, 16 CFR 1.21 *et seq.*; and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, has initiated a proceeding for the repeal of the trade regulation rule concerning promotional allowances in the men's and boys' tailored clothing industry.

List of Subjects in 16 CFR Part 412

Advertising, Trade practices, Clothing, Promotional allowances, Unfair methods of competition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–15548 Filed 7–1–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5

[Notice No. 773]

Standards of Fill

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: ATF is considering amending the regulations prescribing standards of fill for wine and distilled spirits. Recently, ATF has received three petitions to amend the regulations to authorize new sizes for distilled spirits containers. Due to the concerns raised by these petitions, ATF wishes to solicit comments on whether the existing standards of fill for distilled spirits and wine containers should be retained, revised, or eliminated.

DATES: Written comments must be received on or before August 31, 1993.

ADDRESSES: Comments must be submitted to the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221. Attn: Notice No. 773.

FOR FURTHER INFORMATION CONTACT: Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations relating to the "size and fill" of alcoholic beverage containers "as will prohibit deception of the consumer with respect to such products or the quantity thereof * * *" Historically, it has been ATF's position that standards of fill for distilled spirits and wine containers are necessary, and that without such

standards there would be a proliferation of bottle sizes, as well as an increase in the number of bottle sizes that are similar in size and shape, possibly resulting in consumer confusion and deception. Under current regulations, there are no standards of fill prescribed for malt beverages. Unlike wine and distilled spirits, malt beverage containers have been fairly well standardized; consequently, there appears to be little likelihood of consumer confusion or deception in this area.

Accordingly, ATF has prescribed metric standards of fill for wine in 27 CFR 4.73(a) as follows:

3 liters
1.5 liters
1 liter
750 milliliters
500 milliliters
375 milliliters
187 milliliters
100 milliliters
50 milliliters

Section 4.73(b) permits the bottling of wine in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

Likewise, metric standards of fill are prescribed for all containers of distilled spirits in 27 CFR 5.47a(a) as follows: (1) For containers other than cans described in paragraph (a)(2) of this section—

1.75 liters
1.00 liter
750 milliliters
500 milliliters (Authorized for bottling until June 30, 1989)
375 milliliters
200 milliliters
100 milliliters
50 milliliters

(2) For metal containers which have the general shape and design of a can, which have a closure which is an integral part of the container, and which cannot be readily reclosed after opening—

355 milliliters
200 milliliters
100 milliliters
50 milliliters

When ATF established the authorized metric standards of fill for wine (T.D. ATF–12, December 31, 1974, 39 FR 45216), and distilled spirits (T.D. ATF–25, March 10, 1976, 41 FR 10217), one of the reasons given was to facilitate international trade, for exported as well as imported products, by using internationally recognized, accepted, and consistent sizes. Since then the regulations have been amended several times, resulting in the addition of the 50 ml and 500 ml standards of fill for wine (T.D. ATF–76, January 7, 1981, 46 FR 1725, and T.D. ATF–303, October 23, 1990, 55 FR 42710), the 100 ml and 375 ml standards of fill for distilled spirits (T.D. ATF–146, September 23, 1983, 48 FR 43319), and the 355 ml size for cans of distilled spirits (T.D. ATF–326, July 14, 1992, 57 FR 31126).

The 355 ml size is equivalent to the standard 12 fluid ounce container. In 1986, the regulations were amended to eliminate the 500 ml standard of fill for distilled spirits products bottled or imported after June 30, 1989 (T.D. ATF–228, May 1, 1986, 51 FR 16167).

ATF has recently received three petitions requesting that the standard of fill regulations for distilled spirits products be amended to include four sizes which are used in various other countries. The petitioners take the position that the existing standards of fill are actually operating as impediments to international trade.

Cuba Libre Products, Inc. has requested that the regulations be amended to authorize a 296 ml standard of fill for ready-mixed distilled spirits cans. 296 ml is the equivalent of 10 fluid ounces. Cuba Libre argues that the 296 ml can contains two standard servings of their rum and cola product, and that other sizes would not be appropriate for a product which is intended to be consumed upon opening. Cuba Libre currently markets a rum and cola product in Europe and Latin America in a 296 ml can.

Tailor Made Import Distributors has requested that the regulations be amended to reinstate the 500 ml standard of fill for distilled spirits bottles.

Tailor Made wishes to import distilled spirits products from Ukraine and other states in the former Soviet Union, and they state that the only bottles available on a commercially viable level in the Commonwealth of Independent States (CIS) are 500 ml bottles. Tailor Made feels that the current standard of fill requirements constitute an impediment to trade between the United States and the states in the former Soviet Union.

Finally, ATF received a petition from the Corporacion de Exportaciones Mexicanas, S.A. (CEMSA), a Mexican importer. CEMSA requests that the distilled spirits regulations be amended to authorize two new sizes which are currently in use in Mexico: the 680 ml bottle and the 946 ml bottle.

Although the petitions merely requested an amendment of the standards of fill requirements for distilled spirits, ATF believes that it is appropriate to also address the larger issue of retaining or eliminating the standard of fill requirements for distilled spirits and wine. The interest expressed in increasing the number of authorized standard sizes for distilled spirits containers is likely to result in future requests for the recognition of additional standard sizes for wines and distilled spirits.

A common theme in the three petitions is the argument that the current standard of fill regulations are standing in the way of international trade between the United States and countries which have different standard container sizes. It has been suggested that it would not be commercially feasible for producers of distilled spirits products in these countries to invest in new bottling equipment so as to comply with U.S. standard of fill requirements. Thus, the petitioners argue that the addition of new standard container sizes would facilitate international trade.

The issues raised by the three petitions are not new. In 1987, ATF issued an advance notice of proposed rulemaking (Notice No. 633, June 24, 1987, 52 FR 23685), which solicited general comments on whether the existing standard of fill requirements should be retained. That advance notice was in response to a petition from the Washington State Liquor Control Board to amend the regulations to allow the gray market (parallel) importation of distilled spirits not bottled in an authorized metric standard of fill as long as the bottles were labeled with certain additional information. The vast majority of the commenters favored retaining the existing standards of fill, and in Notice No. 696 (February 6, 1990, 55 FR 3980), ATF announced that it was withdrawing Notice No. 633.

Furthermore, the issue of the 500 ml standard of fill for distilled spirits has already been the subject of rulemaking by ATF. When this size was eliminated by T.D. ATF–228, one of the reasons given was to prevent the proliferation of different sizes which might be deceptively similar to the consumer. The comments received by ATF were overwhelmingly in favor of the elimination of the 500 ml size, and there were reports of consumer confusion between the 375 ml and 500 ml sizes, because of the closeness in fill and bottle shape between the two sizes. However, the petition from Tailor Made argues that the 500 ml size should be reinstated, in order to facilitate trade between the United States and the former Soviet states.

Although ATF has addressed many of these issues in recent rulemaking projects, the petitioners argue that changing world economic conditions merit the reconsideration of ATF's longstanding policy on standards of fill. Thus, ATF has been asked to amend the

regulations to reinstate the 500 ml standard of fill for distilled spirits containers, and to authorize three new sizes for distilled spirits containers: a 296 ml can, a 680 ml bottle and a 946 ml bottle.

ATF recognizes that the existing standards of fill may cause some difficulties for importers who wish to bring in distilled spirits from countries where the standard bottle sizes differ from the sizes used in the United States. However, the purpose of the regulations is to prevent consumer deception with respect to these products. The rationale for the original metric scheme was based on approximating customary U.S. sizes for distilled spirits containers. The sizes reflected round measurements and encouraged simplification. In order to prevent consumer deception, size variations were apparent and distinct. The addition of more odd sizes with less distinction between them would undermine the policy of maintaining sufficient separation of container sizes to prevent consumer deception.

However, in view of the petitioners' arguments that changing economic conditions necessitate a change in the standard of fill regulations, ATF wishes to solicit comments on the following questions:

(1) Should the existing standards of fill for distilled spirits and wine be retained, and if so, why?

(2) If the standards of fill are retained, should the regulations be amended to expand the authorized standards of fill to include a 296 ml can, a 500 ml bottle, a 680 ml bottle, and a 946 ml bottle size for distilled spirits products?

(3) Should ATF eliminate the existing standards of fill for wine and distilled spirits products, in favor of allowing marketing practices and consumer preferences to dictate container sizes? Have changes in the world economy necessitated such an action?

(4) If standards of fill are abolished, should the regulations impose any additional labeling requirements in order to prevent consumer confusion which might result from the possible proliferation of bottle and can sizes?

In addition to the above questions, ATF is soliciting comments on any other suggestions or alternatives relating to the issue of standards of fill for wine and distilled spirits.

Public Participation

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after the closing date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. All comments submitted in response to this notice will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

The principal author of this document is Gail Hosey of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority

This advance notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Signed: June 3, 1993.

Stephen E. Higgins,

Director.

Approved: June 17, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15652 Filed 7–1–93; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Outreach and Assistance Grants for Socially Disadvantaged Farmers and Ranchers

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) is requesting grant proposals for outreach and assistance grants to assist socially disadvantaged farmers and ranchers. This action is being taken to reverse the decline of socially disadvantaged farmers and ranchers in agriculture. The intended outcome is to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms, participate in agricultural programs, and become an integral part of the agricultural community.

DATES: Proposals will be accepted until August 1, 1993.

ADDRESSES: Submit proposals to Farmers Home Administration, Special Programs Units, Office of the Deputy Administrator for Program Operations, room 4923, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Pickinpaugh, 202–720–0358 for program information or the Budget Division of the Farmers Home Administration on 202–720–9593 for fiscal or budget information.

Comparison With Other Notices

This Notice replaces a Notice published in the **Federal Register** on February 23, 1993, at 58 FR 11172, by the Extension Service of the United States Department of Agriculture. Responsibility and funding for the subject grant program has been transferred from the Extension Service to FmFA. Those interested in applying for this grant program should be guided solely by this **Federal Register** Notice in preparing their grant proposal. FmHA has made several changes to the scope and qualifications for FY 93 grants.

Program Description

(a) Purpose

Proposals are requested for fiscal year 1993 under the Outreach and Assistance Grants Program for Socially Disadvantaged Farmers and Ranchers. Competitive grants will be awarded to assist eligible organizations and institutions to develop five-year plans for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The authority for this Program is contained in section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 2279.

The program is administered by the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA). Assistance under the program should include information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(b) Available Funding

For fiscal year 1993, $1 million is available for this program. Individual grants will be awarded in amounts based on the documentation and justification contained in each proposal and agreed upon by the Farmers Home Administration. Future funding is subject to Appropriations. Funding by FmHA of a grant to develop a five-year outreach plan under this Program does not ensure or guarantee funding over the next five years regardless of Appropriations.

(c) Eligibility

Proposals are invited from any community-based organization that: (1) Has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers; (2) provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance; and (3) does not engage in activities prohibited under section 501(c)(3) of the Internal Revenue Code of 1986. Proposals are also invited from 1890 Land-Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged family farmers and ranchers in their region. In addition to the above, an applicant must qualify as a responsible applicant in order to be eligible for a grant award under the Program. To qualify as responsible, an applicant must meet the following standards:

(1) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through sub-agreement(s));

(2) Ability to comply with the proposed or required completion schedule for the project;

(3) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government; and

(5) Otherwise be qualified and eligible to receive a grant under the applicable laws and regulations.

(6) For entity applicants, the majority interest of the entity must be held by socially disadvantaged individuals. For an individual applicant, the applicant must be a member of a Socially disadvantaged group.

(d) Definitions

For the purpose of awarding grants under this Program, the following definitions are applicable.

(1) "Agricultural programs" means those activities established or authorized by: the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic

Allotment Assistance Act; and the Food Security Act of 1985;

(2) "Awarding official" means the Administrator of the Farmers Home Administration;

(3) "Grant" means the award by the Administrator to assist grantee to assist eligible organizations and institutions for the purpose of developing five-year plans to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs;

(4) "Grantee" means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded;

(5) "Peer review panel" means the appropriate employees of the U.S. Department of Agriculture;

(6) "Project" means the particular activity within the scope of the Program as identified herein;

(7) "Project director" means the individual who is responsible for technical direction of the project, as designated by the grantee in the grant proposal and approved by the Administrator;

(8) "Project period" means the total time approved by the Administrator for conducting the proposed project as outlined in an approved grant proposal or the approved portions thereof;

(9) "Socially disadvantaged farmer or rancher" means a farmer or rancher who is a member of a socially disadvantaged group; and

(10) "Socially disadvantaged group" means a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. FmHA has identified socially disadvantaged groups to consist only of Blacks, Women, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

Proposal Preparation

(a) Proposal Cover Page

(1) Title of Proposal.

The title of the proposal must be brief (80-character maximum) yet represent the major thrust of the project.

(2) Other information.

Also include the following information on the proposal cover page:

(a) Name, address, telephone and fax numbers of applicant and project director.

(b) Signatures and date. The cover page must contain the original signatures of the Project Director and the Authorized Organizational Representative who possesses the necessary authority to commit the entity's time and other relevant resources.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 pages in length. The project summary should contain the following:

(1) Brief summary of the needs of socially disadvantaged farmers and ranchers in the area to be served to enhance their ability to participate in agricultural programs;

(2) A brief description of the steps necessary to develop a 5-year plan;

(3) Goal of the 5-year plan and overall project goal(s) and supporting objectives; and

(4) Relevance and/or significance of the 5-year plan to enhancing the participation of socially disadvantaged farmers and ranchers in agriculture.

(c) Project Description

The specific aims of the project must be included in all proposals. The text of the project description may not exceed 15 pages and must contain the following components:

(1) Introduction: A clear statement of the goal(s) and supporting objectives of the proposed project should preface the project description.

(2) Background and Existing Situation: Provide a detailed description giving rise to the need to develop a 5-year plan to assist socially disadvantaged farmers and ranchers.

(3) Objectives: The objectives of developing a 5-year plan should be clear, complete, and logically arranged statements. The statements should detail the major steps necessary to develop the plan with specific milestones and planned accomplishments. The objectives should contain details of how the accomplishments will advance the goal for assisting socially disadvantaged farmers and ranchers in obtaining information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

(4) Procedures: Describe the step necessary to develop a 5-year plan including the methods or plan of action to attain the stated objectives.

(5) Evaluation: Give specific evaluation objectives including impact factors and indicators of effectiveness and efficiency in accomplishing objectives.

(d) Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractual arrangements with other entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship.

(e) Budget

A budget and a detailed narrative in support of the budget is required. Show all funding sources and itemize costs by the following line items: Personnel costs, equipment, material and supplies, travel and all other costs. Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation, the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

The budget should include only those costs associated with developing the 5-year plan. The proposal should also include estimated budgets for each year of the five year plan based upon anticipated costs. Acceptance by FmHA of the proposal to develop a five-year plan does not ensure or guarantee future funding of the plan.

(f) Social Make of Applicant

Applicants should provide a certification of the social makeup of all members of the applicant/applicant entity including name, gender, race and national origin. For applicant entities, also include the interests held by each member.

Proposal Submission

(a) What To Submit

An original and two copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

(b) Where and When to Submit

Proposals submitted through regular mail must be postmarked by August 1, 1993, and sent to the address below. Hand-delivered proposals must be submitted by August 1, 1993, to an express mail or courier service or brought to the following address: Farmers Home Administration, Special Programs Unit, Office of Deputy Administrator for Program Operations, room 4923, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Proposal Review, Evaluation, and Disposition

(a) Proposal Review

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All accepted proposals will be reviewed by a peer review panel and recognized specialists in the areas covered by the proposals received. The peer review panel will be selected and organized to provided maximum expertise and objective judgment in the evaluation of proposals. Proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in fiscal year 1993.

(b) Evaluation Criteria

In evaluating the proposal, the peer review panel will take into account the degree to which the proposal demonstrates the following:

(1) Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project. (30 Points)

(2) Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, and other essential information to enhance participation of agricultural programs and conducting a successful farming operation. (20 Points)

(3) Adequacy, soundness and appropriateness of the approach to the solution of the problem. (20 Points)

(4) Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. (20 Points)

(5) Originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. (10 Points)

(c) Proposal Disposition

When the peer review panel has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel, will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review, or low evaluation score. USDA reserves the right to negotiate with the Project Director and/or the submitting entity regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to recommending any project for funding. A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

SUPPLEMENTARY INFORMATION:

(a) Grant Awards

Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines. The date specified by the awarding official as the beginning of the project period shall be not later than September 30, 1993. All funds granted under the Program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of any resulting awards, the applicable Federal cost principles, and the Department's Federal assistance regulations. Funds for FY 93 are limited to proposals to develop five-year plans for outreach technical assistance to socially disadvantaged farmers or ranchers.

(b) Obligation of the Federal Government

Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to provide further support of a project or any portion thereof. Acceptance by FmHA of any proposal pursuant to this Program does not ensure further support of a project or any portion thereof. FmHA reserves the right to provide preference to recipients of grants under this program in future outreach and technical assistance proposals for socially disadvantaged farmers or ranchers. FmHA also reserves the right to accept future proposals from applicants to provide outreach and technical assistance proposals for socially disadvantaged farmers or ranchers without regard to their participation in any grant under this Program.

(c) Other Applicable Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review or grants awarded under the Program. These include, but are not limited to the following: 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act; 7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection; 7 CFR part 1.1—USDA implementation of the Freedom of Information Act; 7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964; 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance; 7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans; 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and 35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

The reporting and record keeping requirements contained in this notice have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0156. Public reporting burden for this collection of information is estimated to average 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIR, room 404–W, Washington,

DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575–0156), Washington, DC 20503.

Done at Washington, DC, on June 24, 1993.

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–15741 Filed 7–1–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Carolyn F. Holton or Patricia W. Stroup, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: June 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution Payments	44.4¢/lb	44.4¢/lb.
Canada	Export Assistance on Certain Types of Cheese	27.8¢/lb	27.8¢/lb.
Denmark	EC Restitution Payments	57.9¢/lb	57.9¢/lb.
Finland	Export Subsidy	104.3¢/lb	104.3¢/lb.
France	EC Restitution Payments	63.5¢/lb	63.5¢/lb.
Germany	EC Restitution Payments	71.1¢/lb	71.1¢/lb.
Greece	EC Restitution Payments	0.0¢/lb	0.0¢/lb.
Ireland	EC Restitution Payments	52.6¢/lb	52.6¢/lb.
Italy	EC Restitution Payments	54.8¢/lb	54.8¢/lb.
Luxembourg	EC Restitution Payments	44.4¢/ib	44.4¢/lb.
Netherlands	EC Restitution Payments	45.8¢/lb	45.8¢/lb.
Norway	Indirect (Milk) Subsidy	18.0¢/lb	18.0¢/lb.
	Consumer Subsidy	39.9¢/lb	39.9¢/lb.
		57.9¢/lb	57.9¢/lb.
Portugal	EC Restitution Payments	41.8¢/lb	41.8¢/lb.
Spain	EC Restitution Payments	42.2¢/lb	42.2¢/lb.
Switzerland	Deficiency Payments	151.2¢/lb	151.2¢/lb.
U.K.	EC Restitution Payments	38.2¢/lb	38.2¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 93–15758 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 921067–3144; I.D. 052093A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the commercial fisheries for king and Spanish mackerel.

SUMMARY: This notice announces that anyone entering the commercial fisheries for king and Spanish mackerel in the exclusive economic zone off the Atlantic coastal states south of the New York/Connecticut border and off the Gulf of Mexico coastal states after July

2, 1993, may not be assured of future access to the fishery if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) that limits the number of participants in the fishery. This notice is intended to promote awareness of potential eligibility criteria for access to the commercial fisheries for king and Spanish mackerel and to discourage new entries into the fisheries based on economic speculation while the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) contemplate whether and how access to the commercial fisheries for king and Spanish mackerel should be controlled. This announcement does not prevent establishment of any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed by the Councils or being implemented by the Secretary of Commerce (Secretary).

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources, including king and Spanish mackerel, are managed under the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, prepared by the Councils, and its implementing regulations at 50 CFR part 642 under the authority of the Magnuson Act.

The Councils are considering a limited access system for the commercial king and Spanish mackerel fisheries. The Councils voted to establish July 2, 1993, as a control date for new entrants into the commercial king and Spanish mackerel fisheries and requested that a notice be published in the **Federal Register** announcing that anyone entering the commercial king and Spanish mackerel fisheries after the control date will not be assured of future participation if the Councils develop, and the Secretary approves and implements, an effort-controlled fishery management regime limiting the number of participants in the fisheries. The Councils may evaluate participation in the fishery by documentation of landings of king and Spanish mackerel prior to the control date.

In establishing a control date and making this announcement, the Councils intend to discourage speculative entry into the commercial king and Spanish mackerel fisheries while the Councils discuss possible limited entry or access-controlled management regimes for the fisheries. As the Councils consider a limited entry or access-controlled management regime, certain fishermen who do not currently fish for king or Spanish mackerel, and never have done so, may decide to enter the fisheries for the sole purpose of establishing a record of making commercial landings. In the absence of a control date, such a record generally may be considered indicative of economic dependence on the fisheries. On this basis, such fishermen may lay claim to access to a king or Spanish mackerel fishery that the Councils may intend to be limited to traditional participants. New fishery entrants subsequent to the establishment of any limited entry or access-controlled system may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant subsequent to establishment of a limited entry or access-controlled system.

When management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully or overdeveloped. Those seeking possible windfall gain from a potential management change can exacerbate the original problems. To help distinguish *bona fide* and established king and Spanish mackerel fishermen from speculative entrants to the fisheries, a control date may be set before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering the fisheries after that date will not necessarily assure them of future access to the fishery resources on grounds of previous participation.

This establishment of a control date does not commit the Councils or the Secretary to any particular management regime or criterion for entry into the commercial king and Spanish mackerel fisheries. Fishermen are not guaranteed future participation in the fisheries regardless of their date of entry or intensity of participation in the fisheries before or after the control date. The Councils may subsequently choose a different control date, or they may choose a management regime that does not make use of such a date. The Councils are free to apply other qualifying criteria for fishery entry. The Councils may give varying considerations to fishermen in the fisheries before and after the control date. Finally, the Councils may choose to take no further action to control entry or access to the fisheries.

Dated: June 28, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–15660 Filed 7–1–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 2, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agency listed:

Commissary Shelf Stocking, Custodial and Warehousing, Barksdale Air Force Base, Louisiana

Food Service Attendant, Portland Air National Guard Base, Portland, Oregon

Janitorial/Custodial, Auke Bay Station Post Office, 11899 Glacier Highway, Auke Bay, Alaska

Janitorial/Custodial, Douglas Station Post Office, 904 Third Street, Douglas, Alaska

Janitorial/Custodial, Naval and Marine Corps Reserve Center, 615 Kenhorst Boulevard, Reading, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15749 Filed 7–1–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 2, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 23, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notice (58 FR 21706) of proposed addition to the Procurement List.

Comments were received from a subcontractor to the current contractor for this service. The subcontractor claimed that the addition of this service to the Procurement List would have a significant impact on it when combined with another service recently added for which the firm was the current contractor. The subcontractor claimed that removal of the service from the competitive bidding system would also cause 30 of its employees, most of whom are heads of households, to lose their jobs. Additionally, the subcontractor's employees wrote to the Committee expressing their concerns about losing their jobs as the result of the Committee's action.

The contracting activity has informed the Committee that this service will be offered for contracting with a minority firm under the Small Business Administration's 8(a) program if it is not included under the Committee's program. Consequently, the subcontractor would not receive the contract for this service regardless of the Committee's decision on this proposal.

Moreover, the Committee's statute requires nonprofit agencies providing commodities and services to the Government under its authority to employ people with severe disabilities for an overall total of at least 75% of the direct labor hours required to provide commodities and services to the Government and its other customers. A nonprofit agency has little choice about displacing workers without severe disabilities to meet this requirement.

The purpose of the Committee's program is to create employment for people with severe disabilities. These people have unemployment rates exceeding 65%. They are considerably less likely than the subcontractor's employees to secure other employment. Consequently, the Committee considers the creation of employment for people with severe disabilities through the addition of this service to the Procurement List to outweigh the possibility that the subcontractor's employees will not find comparable employment.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Joseph P. Addabbo Federal Building, Jamaica Avenue and Parsons Boulevard, Jamaica, New York

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15748 Filed 7–1–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 2, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 5, April 23, May 7 and 14, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 12580, 21706, 27272 and 28564) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Bandage, Gauze

6510–00–582–7992

Gloves, Cloth, Cotton

8415–00–964–4615

8415–00–964–4760

8415–00–964–4925

Services

Janitorial/Custodial, Federal Building, Fairbanks, Alaska

Janitorial/Custodial S.E., Federal Center, Building 216, M Street, S.E. Washington, DC

Janitorial/Custodial, Federal Building and U.S. Courthouse, 2 South Main Street, Akron, Ohio

Mailroom Operation U.S. Army Corps of Engineers, Robert Duncan Plaza, 333 1st Avenue, U.S. Custom House, 220 N.W. 8th Avenue, Portland, Oregon

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15747 Filed 7–1–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 170. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 170 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
Alaska:				
Adak [5]	$10	$34	$44	10-01-91
Anaktuvuk Pass	83	57	140	12-01-90
Anchorage:				
05-15-09-15	174	71	245	05-15-93
09-16-05-14	81	66	147	12-01-92
Aniak	73	36	109	07-01-91
Atqasuk	129	86	215	12-01-90
Barrow	86	73	159	06-01-91
Bethel	82	64	146	01-01-93
Bettles	65	45	110	12-01-90
Cold Bay	110	54	164	07-01-93
Coldfoot	95	59	154	10-01-92
Cordova	66	77	143	12-01-92
Craig	67	35	102	07-01-91
Dillingham	76	38	114	12-01-90
Dutch Harbor-Unalaska	113	67	180	05-01-92
Eielson AFB:				
05-15—09-15	100	66	166	05-15-93
09-16—05-14	65	67	132	12-01-92
Elmendorf AFB:				
05-15—09-15	174	71	245	05-15-93
09-16—05-14	81	66	147	12-01-92
Emmonak	72	54	126	06-01-93
Fairbanks:				
05-15—09-15	100	66	166	05-15-93
09-16—05-14	65	67	132	12-01-92
False Pass	80	37	117	06-01-91
Ft. Richardson:				
05-15—09-15	174	71	245	05-15-93
09-16—05-14	81	66	147	12-01-92
Ft. Wainwright:				
05-15—09-15	100	66	166	05-15-93
09-16—05-14	65	67	132	12-01-92
Homer:				
05-01—09-30	71	60	131	05-01-93
10-01—04-30	53	62	115	12-01-92
Juneau:				
05-01—10-01	88	74	162	05-01-92
10-02—04-30	75	73	148	01-01-92
Katmai National Park	89	59	148	12-01-90
Kenai-Soldotna:				
04-02—09-30	94	68	162	04-02-93
10-01—04-01	57	66	123	12-01-92
Ketchikan:				
05-14—10-14	90	77	167	06-01-93
10-15—05-13	68	75	143	10-15-93
King Salmon [3]	75	59	134	12-01-90
Klawock	75	36	111	07-01-91
Kodiak	71	61	132	01-01-92
Kotzebue	133	87	220	05-01-93
Kuparuk Oilfield	75	52	127	12-01-90
Metlakatla	79	44	123	07-01-91
Murphy Dome:				
05-15—09-15	100	66	166	05-15-93
09-16—05-14	65	67	132	12-01-92
Nelson Lagoon	102	39	141	06-01-91
Noatak	133	87	220	05-01-93
Nome	71	58	129	01-01-93
Noorvik	133	87	220	05-01-93
Petersburg	72	64	136	05-01-92
Point Hope	99	61	160	12-01-90
Point Lay [6]	106	73	179	12-01-90
Prudhoe Bay-Deadhorse	64	57	121	12-01-90
Sand Point	75	36	111	07-01-91
Seward:				
05-01—09-30	107	53	160	05-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
10–01—04–30	61	48	109	01–01–92
Shungnak	133	87	220	05–01–93
Sitka-Mt. Edgecombe	72	69	141	01–01–92
Skagway:				
05–14—10–14	90	77	167	06–01–93
10–15—05–13	68	75	143	10–15–93
Spruce Cape	71	61	132	01–01–92
St. George	100	39	139	06–01–91
St. Mary's	77	59	136	06–01–93
St. Paul Island	81	34	115	12–01–90
Tanana	71	58	129	01–01–93
Tok:				
04–21—10–31	60	58	118	06–01–93
11–01—04–20	48	57	105	11–01–93
Umiat	97	63	160	12–01–90
Valdez:				
05–01—09–01	98	53	151	05–01–93
09–02—04–30	82	70	152	12–01–92
Wainwright	90	75	165	12–01–90
Walker Lake	82	54	136	12–01–90
Wrangell:				
05–14—10–14	90	77	167	06–01–93
10–15—05–13	68	75	143	10–15–93
Yakutat	70	40	110	12–01–90
Other[3, 4, 6]	63	48	111	01–01–93
American Samoa	85	47	132	12–01–91
Guam	155	75	230	05–01–93
Hawaii:				
Island of Hawaii: Hilo	73	61	134	06–01–93
Island of Hawaii: Other	80	71	151	06–01–93
Island of Kauai				
04–01—11–30	110	75	185	06–01–93
12–01—03–31	122	76	198	12–01–93
Island of Kure[1]		13	13	12–01–90
Island of Maui				
04–01—11–30	79	71	150	06–01–93
12–01—03–31	96	73	169	12–01–93
Island of Oahu	105	62	167	06–01–93
Other	79	62	141	06–01–93
Johnston Atoll[2]	20	20	40	10–01–92
Midway Islands[1]		13	13	12–01–90
Northern Mariana Islands:				
Rota	68	55	123	01–01–93
Saipan	100	69	169	01–01–93
Tinian	50	55	105	01–01–93
Other	20	13	33	12–01–90
Puerto Rico:				
Bayamon:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Carolina:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Fajardo (including Luquillo):.				
04–16—12–14	90	57	147	08–01–92
12–15—04–15	134	61	195	12–15–92
Ft. Buchanan (incl GSA Serv Ctr, Guaynabo):.				
04–16—12–14	93	67	160	08–01–92
12–15–04–15	116	69	185	12–15–92
Mayaguez	85	65	150	08–01–92
Ponce	106	65	171	08–01–92
Roosevelt Roads:				
04–16—12–14	90	57	147	08–01–92
12–15—04–15	134	61	195	12–15–92
Sabana Seca:				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	M&IE rate (B)=	Maximum per diem rate (C)	Effective date
San Juan (incl San Juan Coast Guard Units):.				
04–16—12–14	93	67	160	08–01–92
12–15—04–15	116	69	185	12–15–92
Other	63	52	115	08–01–92
Virgin Islands of the U.S.:				
05–02—12–15	100	68	168	08–01–92
12–16—05–01	144	73	217	12–16–92
Wake Island[2]	4	17	21	12–01–90
All Other Localities	20	13	33	12–01–90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

ADaily Rate:
DOD Personnel—$13
Non-DOD Personnel—$30

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15711 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed meeting.

DATES: The meeting will be held at 0900, Wednesday and Thursday, 21–22 July 1993.

ADDRESSES: The meeting will be held at Bldg 216, Conference Room 2020 A&B at the Naval Research Laboratory, 4555 Overlook Avenue, SW., Washington, DC 20375–5000.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. app. II Sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. Sec. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15706 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, July 14, 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military

Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 29, 1993.

L. M. Bynum,

Alternate, OSB Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15707 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and OMB Control Number: Notice to Mariners Marine Information Report and Suggestion Sheet, HTC Form 8260–3 OMB Control Number 0704–0211

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the **Federal Register**

Number of Respondents: 520

Responses per Respondent: 1

Annual Responses: 520

Average Burden per Response: 15 minutes

Annual Burden Hours: 130 hours

Needs and uses: This form is used for gathering information or collecting data to be reviewed and checked by Information Processing Operations, a part of the Information Service Operation to fulfill our mission in marine safety. It is supplied by mariners, as needed, to keep marine information products and services up to date for navigational safety.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

Dod Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15709 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Oceanic Sounding Report, DMA Form 8053–1, OMB Control No. 0704–0208

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the **Federal Register**

Number of Respondents: 30

Responses per Respondent: 1

Annual Responses: 30

Average Burden per Response: 3 hours

Annual Burden Hours: 90

Needs and Uses: The information collected provides instructions and outlines information needed for ship data collection operations of bathymetric data to be used in the construction of nautical charts.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15708 Filed 7–1–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review.

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: DMA Hydrographic/ Topographic Center Port Information Report, DMA Form 8330–1, OMB Control No. 0704–0210

Type of Request: Expedited Processing; approval date requested: 30 days following publication in the **Federal Register**

Number of Respondents: 100

Responses Per Respondent: 2

Annual Responses: 200

Average Burden Per Response: 30 minutes

Annual Burden Hours (Including recordkeeping): 102 hours

Needs and Uses: The information collected is submitted in the interest of marine safety by military vessels and merchant ships. Information is submitted voluntarily whenever navigators wish to provide updated material to DMA for navigational safety publications. DMA evaluates the incoming data and incorporates it into future editions of its navigation products.

Affected Public: Businesses of other for-profit and Federal agencies or employees

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of

the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

Dated: June 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-15710 Filed 7-1-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on July 12-16, and July 19-23, 1993, at the Naval Command, Control and Ocean Surveillance Center, Research, Development, Test, and Evaluation Division, San Diego, California. The sessions on July 12-16, and July 19-22 will commence at 8:30 a.m. and terminate at 5 p.m., the session on July 23, 1993, will commence at 8:30 a.m. and terminate at 10:30 a.m. All sessions of these meetings will be closed to the public.

The purpose of these meetings is to discuss basic and advanced research. All sessions of the meetings will be devoted to briefings, discussions, presentations, and technical examination of information related to defense conversion and dual use technology. Premature public disclosure of this information prior to agency approval would be likely to significantly frustrate implementation of proposed policy actions by the Department of the Navy. The information involved is specifically authorized by Executive order to be withheld from the public if the agency determines it to be in their best interest. It therefore is appropriate that all sessions of the meetings be closed to the general public. The agency-protected information to be discussed is so inextricably intertwined with unclassified matters as to preclude opening any portion of these meetings. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of these meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(9) (B) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning these meetings contact: Commander R.C. Lewis, U. S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5660, Telephone Number: (703) 696-4870.

Dated: June 29, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 93-15809 Filed 7-2-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Coastal Zone Foundation

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary noncompetitive financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i) (B) and (D) to the Coastal Zone Foundation (CZF), Middleton, CA, under Grant Number DE-FG01-93EP10049. The purpose of the proposed grant is to support a conference designed to bring technical and professional experts together to exchange information on the status, protection and use of coastal and ocean resources. The Symposium will spotlight scientific and professional tools for managing coastal and ocean resources including energy resources. The DOE and CZF are cost-sharing this grant agreement. The DOE will provide estimated funding in the amount of $10,000 and CZF will provide an estimated $14,200.

FOR FURTHER INFORMATION CONTACT: Please write U.S. Department of Energy, Office of Placement and Administration, Attn: Juanita Ellis, PR-322.4, 1000 Independence Avenue, SW., Washington DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the Coastal Zone Foundation to organize and conduct a five-day symposium entitled, "The Eighth Symposium on Coastal and Ocean Management", to be held July 19 through 23, 1993 in New Orleans, Louisiana.

The goal of the conference is to bring technical and professional experts together to exchange information on the status, protection and use of coastal and ocean resources. The symposium will spotlight scientific and professional tools for managing coastal and ocean resources including energy resources. CZF will provide the Office of Domestic and International Energy Policy (EP) with the unique opportunity to examine environmental and economic policy as it relates to coastal zone and ocean management practices with a group of technical and professional experts. This activity will enable EP to carry out its mission of analyzing and evaluating environmental, economic and technical policies and practices as they relate to energy.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing a forum to examine environmental and economic policy as they relate to coastal zone and ocean management practices with a group of technical and professional experts. The DOE's support of the conference will enhance the public benefits to be derived, and the DOE knows of no other entity which is conducting or is planning to conduct such a conference.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a benefit, both in (1) publicizing and exchanging information pertinent to DOE's multiple missions which concern coastal and related ocean and land resources; and (2) addressing the broad conference purpose of diffusing information and views in order to increase the application by practitioners and decisionmakers of current scientific and engineering research, knowledge and practice so as to improve coastal and ocean-related planning, development, and regulation and conservation actions for the public benefit. The anticipated term of the proposed grant is 5 months from the date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93-15753 Filed 7-1-93; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Revised Agency Policy.

SUMMARY: Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839d(c), requires the

Administrator of the Bonneville Power Administration (BPA) to conduct public hearings on any BPA proposal to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource; and to determine whether the proposed resource is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). In addition, the Act also permits the Council to determine subsequently whether the proposal is consistent with the Council's Plan. If either BPA or the Council determines that the proposed resource is inconsistent with the Plan, BPA can implement the proposal only after receiving approval from Congress.

After an extensive public review process, BPA and the Council first promulgated and adopted their respective sections 6(c) Policies (Policy) in November 1986. *See* 51 Fed. Reg. 42, 903 (1986) and 51 Fed. Reg. 42,038 (1986). As adopted in November 1986, these Policies were limited in scope to (1) proposals to acquire a major regional or non-regional resource and (2) proposals to implement a conservation measure which would conserve an amount of electric power equivalent to that of a major resource. In addition, the November 1986 section 6(c) Policy requires the Administrator to review and reevaluate this policy after 5-years in light of new information and understanding regarding resource acquisition that might have become available after the policy was adopted.

In accordance with the 5-year review requirement, BPA and the Council reviewed their respective section 6(c) Policies and proposed to amend the policies to address payment or reimbursement of investigation and preconstruction expenses to major resource sponsors, and granting billing credits or providing services involving a major resources. In addition, BPA proposed to incorporate a provision in its section 6(c) Policy that would allow a section 6(c) review to be conducted under expedited hearing procedures under certain circumstances. Because a section 6(c) review had been implemented only once in the intervening 5-year period, both BPA and the Council proposed to extend, without modification, the provisions adopted in November of 1986, including the 5-year review requirement.

BPA's revised 6(c) Policy supersedes and replaces the section 6(c) procedures found at 51 Fed. Reg. 42,903 (1986). These procedures shall apply to all 6(c) hearings initiated on or after March 26, 1993. This Policy addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criterion for a BPA finding of consistency with the Plan.

Responsible Official: Charles E. Meyer, Director, Division of Resource Planning, Office of Energy Resources, is the official responsible for this Policy.

FOR FURTHER INFORMATION CONTACT: Julie Pipher, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478.

Information may also be obtained from:

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.

Mr. George Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 243, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, Room 112, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98801, 509–662–4379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street, Room 450, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 USC 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource; and to determine whether the proposal is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the proposal is consistent with the Council's Plan. if either the Administrator or the Council determine that the proposal is inconsistent with the Plan, BPA can acquire the major resource or implement the proposal only after receiving expenditure authorization from Congress. Section 6(c) provides:

6.(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

6.(c)(1)(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State conservation measure implemented, and the Administrator's customers;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

6.(c)(1)(D)(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its

inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the **Federal Register**, and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the **Federal Register**, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Involvement

After an extensive public review process, BPA and the Council first promulgated and adopted their respective section 6(c) Policies in November, 1986. *See* 51 Fed. Reg. 42, 903 (1986) and 51 Fed. Reg. 42,028 (1986). As adopted, these Policies were limited in scope to: (1) proposals to acquire a major regional or non-regional resource, and (2) proposals to implement a conservation measure which would conserve an amount of electric power equivalent to that of a major resource. These policies did not address: (1) proposals to pay or reimburse investigation and preconstruction expenses of the sponsor of a major resource, or (2) proposals to grant billing credits or services involving a major resource.

In response to comments received through the public process, the November 1986 section 6(c) Policy requires the Administrator review and reevaluate this policy after 5-years, in light of new information and understanding regarding resource acquisition that might have become available after the time the policy was adopted. BPA continues to believes that its knowledge and experience in conducting section 6(c) reviews of major resource will increase over time.

In October of 1991, BPA and the Council began the required 5-year review of their respective 6(c) Policies. The agencies met to discuss the issues and procedures for a joint review of their respective Policies. Because a section 6(c) review had been implemented only once in the intervening 5-year period, both BPA and the Council proposed to extend without modification the provisions adopted in November of 1986, including the 5-year review requirement. BPA and the Council, however, proposed to expand the scope of their Policies to include previously unaddressed proposals. These proposals include payment or reimbursement of investigation and preconstruction expenses to the sponsor of a major resource and granting billing credits or services involving a major resource. In addition, BPA proposed to incorporate a provision in its Policy that would allow section 6(c) review to be conducted under expedited hearing procedures under certain circumstances.

On August 20, 1992, BPA published in the **Federal Register** a notice of Review of and Amendment to Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act. 57 Fed.Reg. 37,792 (1992). BPA and the Council then mailed copies of BPA's **Federal Register** Notice and the Council's staff issue paper, dated August 21, 1992, on the Council's Proposed Amendment and Extension of Time for Review of Council Statement of Policy Implementing Section 6(c), to over 3,200 groups and individuals (including BPA customers, State energy offices, fish and wildlife representatives, Governors, public interest groups, public utility regulatory bodies, state legislative bodies and others) for public comment. As part of the public review process, BPA and the Council agreed to exchange all comments received to assist in finalizing their respective policies. On September 11, 1992, BPA extended the public comment period to October 16, 1992, to coordinate with the Council's public process. 57 Fed. Reg. 41,740 (1992). In response to the notice, BPA received, in total, 5 written comments. These commentors represented State agencies, organizations representing public utilities, and interested individuals. Written comments were submitted by W. Bishop, Washington Energy Facility Site Evaluation Council, W. Drummond, Public Power Council, and B. Dutro and C. Browne, private citizens. These comments were considered in developing BPA's final amendments to its section 6(c) Policy. Copies of the written comments and BPA's Decision Document, which addresses these comments, are available from the BPA's Public Involvement Office. Although the Council provided an opportunity for oral comments at their October 14–15, 1992, meeting in Olympia, WA, none were given.

C. Scope of Policy

This section 6(c) Policy addresses proposals under subsections (a), (b), (f), (h), and (l), of section 6 to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource.

II. Policy

A. Definitions

This section contains definitions of terms used in the Policy and is a part of the Policy. Terms defined in the Northwest Power Act have the same meaning in this Policy, unless further defined.

1. *Acquire or Acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for:

a. Specified rights to the output or capability of a generating resource; or

b. The installation of specified conservation measures, or for conservation savings.

2. *Binding Contract Offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation Resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. The direct application of renewable resources by a consumer; or

b. The implementation of conservation measures.

4. *Generating Resource.* A "generating resource" is actual or planned electric power capability of the following type of generating facility:

a. Renewable resources, such as solar, wind, hydro, geothermal, biomass, or similar sources of energy; or

b. Resources using waste heat or having high fuel conversion efficiency; or

c. Thermal resources, such as nuclear and coal; or

d. Combustion turbines.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time period on specified terms. No commitment to acquire a resource is made at the time an option is purchased. Options will be used as low-cost means to increase BPA's flexibility in meeting the range of future resource needs.

6. *Billing Credits.* Billing credits are an adjustment to a customer's power bill or equivalent cash payment intended to compensate the customer for electric power resources which are developed or acquired and used to reduce the customer's net requirements for electric power or reserves purchased from BPA.

7. *Investigation and Preconstruction Expenses.* These expenses are costs incurred by or on behalf of sponsors of resources in obtaining required regulatory approval, including but not limited to licenses and permits; environmental analysis/impact statements; land options; easements and right-of-way acquisition; siting and licensing; geotechnical surveys; and architectural and engineering fees. These costs do not include the procurement of capital equipment or construction material or the costs associated with development of the resource proposal.

B. Threshold

1. Proposals

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator. This determination will take into account, among other criteria, the existence of sufficient information concerning a proposed future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA shall consult with the Council and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

c. Given the necessarily preliminary current level of understanding of the types of resource acquisitions that may require review pursuant to section 6(c), the Administrator will initiate, at least once every 5 years, a public policy making concerning the Section 6(c) Policy, including threshold, procedures, and consistency criterion, in order to evaluate evolving understandings of resource acquisitions and to assess the need for changes in this Policy. The result of such public policymaking will be a final action for purposes of judicial review under section 9(e)(5) of the Northwest Power Act, or other applicable laws.

2. Generating Resources

a. A proposal to acquire or to grant billing credits for a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits at any one generating resource project constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

b. A proposal to acquire or to grant billing credits for a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits from the utility for that sale constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition or for application of billing credits.

3. Generation Programs

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities binding contract offers to acquire or to grant billing credits for more than 50 average megawatts of electric power for a period of more than 5 years:

(1) From a single generating resource technology, and

(2) At a fixed price or a fixed price formula.

b. The electric power proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition or application of billing credits.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c), for purposes other than that provided for in section 9 of this Policy, shall not be subject to further review under section 6(c).

4. Conservation Resources

a. A proposal to acquire or to grant billing credits for a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired or granted billing credits under a single contract constitute more than 50 average megawatts and are acquired or granted billing credits for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the

term of the contract for acquisition or for application of billing credits.

5. Conservation Programs

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities generic contracts which consist of a set of logically related activities proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode of program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired or granted billing credits shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition or for application of billing credits.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c), for purposes other than that provided for in section 9 of this Policy, shall not be subject to further review under section 6(c).

6. Requests for Proposals

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to an RFP, the Administrator retains the discretion to acquire or to grant billing credits for the electric power or the energy savings through an acquisition or application of billing credits under sections 2–5, above. In the event of an acquisition or the grant of billing credits under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. Options to Acquire Major Resources

a. A proposal to purchase an option shall not be subject to section 6(c) review.

b. A proposal to exercise a major resource option shall be subject to section 6(c) review.

8. Section 6(1) Resources

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

9. Payment or Reimbursement of Investigation and Preconstruction Expenses

a. A proposal to authorize payment of investigation and preconstruction expenses for major resources, for which an agreement or a letter of intent will be signed, identified in the Resource Program is subject to section 6(c) review.

b. A proposal to reimburse investigation and preconstruction expenses of a sponsor, such sponsor having consumers who are end-users of electricity, of a major resource that may be eligible for acquisition but where the project fails prior to completion of the section 6(c) review because of one of the following reasons, is subject to section 6(c) review:

(1) The resource is denied State siting approval or other necessary Federal or State permits or approvals; or

(2) The investigation demonstrates, as determined by the Administrator, that the resource does not meet the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of the Act or is not acceptable because of environmental impacts; or

(3) After the investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

c. A proposal to authorize payment of investigation and preconstruction expenses for the sponsor of any major resource other than those addressed above will be reviewed under section 6(c) on a case-by-case or programatic basis, as appropriate.

C. Section 6(c) Hearings Procedures

The appendix, incorporated by reference into this Policy, specifies the procedures for the section 6(c) hearings.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the Plan in effect at the time the proposal is made.

Issued in Portland, Oregon on March 9, 1993.

Randall W. Hardy,

Administrator.

Revised Appendix to Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

Section 6(c) Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c).

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act Section 6(c).

(e) "Legal Issue" includes any issue rounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6. of these procedures on a major resource action proposed by the Administrator.

(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, and such other materials and information as submitted or developed by the Administrator. The record shall be certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each relevant, major issue in the 6(c) hearing; summarizes the factual, legal

and policy arguments presented by BPA, the parties, and the participants on such issue; and sets forth the Administrator's decision on such issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to section 6(c) in the **Federal Register** and provide a copy of the notice to:

(1) The members of the Council and its executive staff;

(2) The Governor of each State in the Pacific Northwest Region;

(3) The Administrator's customers; and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the Section 6(c) process with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of Section 6(c) Process

(a) A Section 6(c) process on the Administrator's proposed major resource action may be initiated by a hearing notice published in the **Federal Register**. The hearing notice shall:

(1) specify the proposed major resource action;

(2) establish a deadline for filing petitions to intervene;

(3) specify the date on which the Administrator will issue the Record of Decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing;

(4) establish the dates on which the hearing officer will conduct the prehearing conference and commence the 6(c) hearing;

(5) set forth a statement and short explanation of each of the issues to be addressed in the hearing;

(6) state whether the hearing will be conducted pursuant to the provision for expedited hearings procedures, § 16; and

(7) provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.*

(1) Petitions must be filed within the time specified in the section 4. notice for the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) the petitioner has a good reason for filing out of time;

(ii) any disruption of the proceeding might result from allowing a late intervention;

(iii) the petitioner's interest is adequately represented by existing parties; and

(iv) any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 business days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–14 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Oral or written comments must be submitted to the BPA Public Involvement Office.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. **Federal Register** notice. During the conference, the hearing officer shall:

(a) act on all intervention petitions;

(b) establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource actions;

(c) establish a service list;

(d) establish a procedural schedule for the entire hearing which may include the scheduling of prefiled testimony; and

(e) consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

The hearing officer may allow BPA and the parties to any 6(c) hearing to engage in discovery, and be subject to discovery requests, subject to the time available for the hearing and according to the following rules:

(a) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(b) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require the BPA and the parties wishing to participate in clarification of a witness' testimony serve all data requests pertaining to that testimony at least 3 business days prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (a) of this section.

(c) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(d) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolved the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(e) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the trade Secrets Act, 18 U.S.C. 1905.

(f) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) striking the testimony or exhibits to which the question or request relates; or

(2) limiting discovery or cross-examination by the party refusing to answer or respond.

(g) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

9. 6(c) Hearing Schedule

(a) *General Rule.* Consistent with fairness to the parties and participants, the hearing officer may establish procedures and conduct hearings as necessary to develop a full and complete record and to receive public comment and argument related to the proposed major resource action. The Record of Decision in 6(c) hearings shall be issued on the date set forth in the notice issued under section 4., except as provided in paragraph (b) of this section.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from

the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of this determination within 4 days thereafter.

10. Testimony and Exhibits

(a) *General Rule.*

(1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by level of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of documentation, which exclude irrelevant or redundant material.

(b) *Items by Reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official Notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to Strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of Participants.* Testimony and comments received pursuant to section 6, shall be complied in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

11. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-Examinations.*

(1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.*, friendly cross-examination.

(c) *Cross-Examination Exhibits.*

(1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witness' counsel 3 business days prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

12. Briefs

(a) *General Rule.*

(1) At the conclusion of the evidentiary portion of a hearing, the hearing officer may allow each party to submit a brief. The purpose of a brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(2) All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

13. Oral Argument

Any opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

14. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6., service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons on whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8(b) and (h).

15. Record of Decision

(a) *Determinations.* The Administrator shall make public a written decision which contains the following two determinations;

(1) the proposed action satisfies the requirements of subsection (a), (b), (f), (h), and (l), or (m) of Section 6 of the Northwest Power Act, as appropriate; and

(2) either:

(A) the proposed action is consistent with the Council's Plan, or in the case of subsection (f), the proposed action is probably consistent with the Council's Plan; or

(B) the proposed action is inconsistent with the Council's Plan; or in the case of subsection (f), the proposed action is probably inconsistent with the Council's Plan; or

(C) notwithstanding the proposed action's inconsistency with the Council's Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) *Submission of Record.* The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) *Service of Record.* The Administrator shall promptly serve copies of the Record of Decision on all parties to the proceeding. Copies of the Record of Decision shall be made available to participants and the public upon request to BPA's Public Involvement Manager.

16. Expedited Hearings Procedures

(a) *General Rule.* The record of decision in a section 6(c) hearing, conducted under this section, shall be issued within 90 days after the date of the prehearing conference, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Any party to the 6(c) hearing may request that the hearing officer petition the Administrator for an extension of the 90-day hearing limit. The party must show that the request is for good cause and is not dilatory. Upon such a showing, the hearing officer shall submit a written request to the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days after receipt of the hearing officer's request.

(c) *Special Procedure.* Oral argument will not be heard in expedited 6(c) proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.

[FR Doc. 93–15757 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF86–591–004

Coso Power Developers; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Power Developers (Applicant) c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the Navy II Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Naval Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in *California Energy Company, Inc.*, 36 FERC ¶ 62,150 (1986). The Commission issued subsequent recertifications on October 3, 1988 in *Coso Energy Developers*, 45 FERC ¶ 61,003 (1988), on July 14, 1989, in *Coso Power Developers*, 48 FERC ¶ 61,044 (1989) and on July 11, 1990, in *Coso Power Developers*, 52 FERC ¶ 62,016 (1990). On November 16, 1990, in Docket No. QF86–591–004, applicant filed a notice of self-recertification. The instant recertification is requested primarily due to the amendments in the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15669 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–590–005]

Coso Energy Developers; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Energy Developers (Applicant) c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the BLM Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Naval Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in California Energy Company, Inc., 36 FERC ¶ 62,149 (1986). On October 3, 1988, the Commission issued first recertification in Coso Energy Developers, 45 FERC ¶ 61,003 (1988). On December 28, 1988, in Docket No. QF86–590–002 Applicant filed a notice of self-recertification. On July 14, 1989, the Commission issued second recertification in Coso Energy Developers, 48 FERC ¶ 61,044 (1989). On December 15, 1992, Applicant filed a notice of self-recertification. The instant recertification is requested primarily due to the amendments in the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1980.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426,in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15667 filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–327–002]

Coso Finance Partners; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 28, 1993.

On June 17, 1993, Coso Finance Partners (Applicant c/o California Energy Company, Inc. 10831 Old Mills Road, Omaha, Nebraska 68154 submitted for filing an application for recertification of the Navy I Facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the geothermal-fueled small power production facility is located at the Navel Weapons Center in China Lake, California. The Commission originally certified the facility as a qualifying small power production facility in *California Energy Company, Inc.*, 28 FERC ¶ 62,124 (1984). On March 9, 1990, the Commission issued recertification in *Coso Finance Partners*, 50 FERC ¶ 62,154 (1990). On November 16, 1990, in Docket No. QF84–327–002, applicant filed a notice of self-recertification. The instant recertification is requested primarily due to amendments to the ownership agreement pertaining to the facility and its status as an Eligible Facility pursuant to Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the

appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15668 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10455–000–AR]

JDJ Energy Co.; Intent to Hold a Public Meeting in Delaware, AR, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for the Proposed River Mountain Pumped Storage Hydroelectric Project

June 28, 1993.

On June 25, 1993, the Commission staff mailed the River Mountain DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of constructing and operating the applicant's proposed 600-megawatt pumped storage hydroelectric project, to be located in eastern Logan County, Arkansas, approximately 10 miles west of Russellville.

The project's planned upper reservoir would be at the summit of River Mountain. Lake Dardanelle, an existing reservoir managed by the U.S. Army Corps of Engineers, would serve as the project's lower reservoir.

The applicant proposes to locate most project works underground, including the concrete-lined water conduits, powerhouse, and tailrace tunnel. A 500-kilovolt transmission line would extend eastward along the mountain for approximately 1.8 miles, connecting with an existing Arkansas Power and Light transmission line.

The subject DEIS also evaluates the environmental effects of: Implementing applicant's proposal supplemented with staff's recommended mitigative measures; and the no-action alternative (license denial).

The public meeting on the River Mountain Project, which will be recorded by an official stenographer, is scheduled from 7 p.m. to 11 p.m. on Monday, July 19, 1993. The meeting will be held at the Delaware Township firehouse, located at Highway 393 in Delaware, Arkansas.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the River Mountain DEIS for the Commission's public record.

For further information, please contact the FERC environmental coordinator, Jim Haimes, at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15671 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–8–63–003 TM93–8–63–003.]

Carnegie Natural Gas Co.; Compliance Filing

June 28, 1993.

Take notice that on June 23, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of June 1, 1993:

2nd Sub Forty-Third Revised Sheet No. 8
3rd Sub Forty-Third Revised Sheet No. 9

Carnegie states that it is filing the above tariff sheets to supplement and correct the tariff sheets submitted by Carnegie on June 11, 1993, as previously supplemented on June 17, 1993, which were filed to comply with a Letter Order issued on May 27, 1993, in the referenced proceeding. Carnegie states that it is filing these substitute tariff sheets to correct certain errors contained on the tariff sheets tendered in its June 11 compliance filing, specifically relating to the PGA cumulative adjustment for the minimum and maximum commodity rates and the adjusted minimum commodity rate under Carnegie's Rate Schedule SEGSS.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15672 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–7–22–000 and TM93–6–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 28, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on June 21, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's regulations, and Sections 12 and 15 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six copies of the following tariff sheets for its FERC Gas Tariff, First Revised Volume No. 1:

Thirty-Third Revised Sheet No. 31
Twenty-Ninth Revised Sheet No. 34

The tariff sheets are proposed to become effective July 1, 1993. CNG states that the purpose of this filing is to revise both the PGA and TCRA components of its sales rates to reflect proposed billing changes from Texas Eastern Transmission Corporation.

CNG states that copies of the filing were served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 285.214 and 385.211. All motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15673 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–59–002]

High Island Offshore System; Motion to Have suspended Tariff Sheets Into Effect

June 28, 1993.

High Island Offshore System (HIOS), pursuant to section 4(e) of the natural

Gas Act and § 154.67 of the Federal Energy Regulatory Commission's (Commission) regulations, hereby moves to place into effect on July 1, 1993, subject to refund, the change in rates and charges suspended herein by the Commission's order of January 29, 1993, and which is contained in the tariff sheets.

HIOS states that on December 31, 1992, it filed revised tariff sheets with the Commission that provided for an annual rate increase for HIOS' jurisdictional transportation services. The filing was comprised of both "primary" (project financed rate design) and "alternate" (SFV rate design) sets of tariff sheets. On January 29, 1993, the Commission issued an order that, among other things, accepted HIOS' "primary" set of tariff sheets and suspended them for five months, or until July 1, 1993.

In such order the Commission also directed HIOS to remove from its motion rates any costs associated with (1) enhancing HIOS' Electronic Bulletin Board, (2) installing gas control and monitoring systems, and (3) acquiring gas needed for system line pack, that were included in HIOS' filed rates, but which were not actually incurred by the end of the test period. HIOS sought rehearing of this requirement, and on May 20, 1993, the Commission denied rehearing, thus reaffirming the requirement that such costs be removed from HIOS' motion rates. However, the time period for filing for judicial review relative to the Commission's action in this regard does not expire until July 19, 1993.

HIOS states that it is filing tariff sheets which reflect the removal of the specified costs, as reflected in the cost of service set forth on Attachment A to the filing, as directed by the Commission, and moves that such tariff sheets become effective on July 1, 1993, subject to refund.

HIOS states that by filing and moving into effect, these tariff sheets and the rates which they contain, HIOS does not abandon its protest regarding the directive that it remove the specified costs from its motion rates, and reserves all of its rights, including specifically its right to judicial review relative thereto, as well as the right to collect as of July 1, 1993, rates which reflect inclusion of the specified costs should such inclusion be permitted as a result of judicial review. Such tariff sheets reflect, as HIOS proposed in its December 31, 1992, rate filing, the elimination of HIOS' ACA surcharge provision, and the inclusion of the Annual Charge in the operating expenses which underlie HIOS' new rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15674 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–89–000]

HMDC Landfill Gas Energy Recovery Facility; Amendment to Filing

June 28, 1993.

On June 24, 1993, HMDC Landfill Gas Energy Recovery Facility (Applicant) tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data of the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by July 19, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15670 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–500–000]

Natural Gas Pipeline Co. of America; Application

June 28, 1993.

Take notice that on June 18, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed an application with the Commission in Docket No. CP93–500–000 pursuant to section 7(c) of the Natural Gas Act (NGA) requesting that the Commission: (1) Issue a certificate for those facilities currently classified by Natural as "production" for accounting and rate purposes which have not been previously certificated; and (2) authorized the refunctionalization from "production" to "transmission" of all facilities currently classified by Natural as "production" for accounting and rate purposes, all as more fully set forth in the application which is open to the public for inspection.

Natural states that the original primary function of the facilities [1] that Natural proposes to refunctionalize was to provide a natural gas supply to resale customers in a limited, largely localized market in the metropolitan Chicago, Illinois, area. Natural further states that the current use of the facilities it proposes to refunctionalize differs from the original use, because Natural no longer uses the facilities solely to obtain natural gas supplies to fulfill Natural's traditional merchant function. Natural also states that the use of these facilities will change further upon its implementing of Order No. 636, because the original system supply function will disappear. Natural requests an effective date of December 1, 1993, for the refunctionalization of these facilities in order to coincide with the effective date of Natural's compliance with Order No. 636.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

[1] Natural states that these facilities consist of compression equipment, meters, and pipelines of various lengths and diameters in Aransas, Carson, Denton, Gray, Hutchinson, Jack, Moore, Palo Pinto, Parker, Refugio, Roberts, Tarrant, Wheeler, Winkler, Wise Counties, Texas, and Dewey and Texas Counties, Oklahoma.

not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15675 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–4–86–001 and TA93–1–86–002]

Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 28, 1993.

Take notice that on June 23, 1993, Pacific Gas Transmission Company (PGT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Twentieth Revised Sheet No. 4, to be effective June 19, 1993, and Sub. Twenty-First Revised Sheet No. 4, to be effective August 1, 1993.

PGT states that subsequent to its June 18, 1993 filing, PGT discovered a typographical error on First Revised Twentieth Revised Sheet No. 4, of PGT's FERC GAS Tariff, Second Revised Volume No. 1, which PGT requested to become effective June 19, 1993. PGT states that the error was an incorrect base tariff commodity rate of $.106539/MMBtu. PGT states that the correct base tariff commodity rate is $0.035733/MMBtu.

PGT states that there is no correction on Substitute Twenty-First Revised Sheet No. 4, which was submitted as part of the original filing referenced above. PGT states that it is resubmitting Substitute Twenty-First Revised Sheet No. 4, to make it possible for FERC to simply discard the original disk with the tariff sheets and exchange it for the corrected disk.

PGT states that copies of the filing are being served upon all affected jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15676 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–501–000]

Tennessee Gas Pipeline Co.; Application

June 28, 1993.

Take notice that on June 18, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–501–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to provide firm transportation service for Fulton Cogeneration Associates, L.P. (Fulton) and to construct and operate certain facilities necessary to provide the service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee proposes to transport a maximum daily quantity of 6,700 Dth for Fulton from various receipt points to an existing delivery point interconnection with CNG Transmission Corporation (CNG) at Ellisburg, Pennsylvania. Tennessee proposes to charge Fulton a demand charge of $13.23 per Dth and a commodity charge of $.0084 per Dth delivered.

In order to provide this service, Tennessee proposes to construct a 3 mile loop of 30-inch diameter pipeline in Chautauqua County, New York at an estimated cost of $4,166,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15677 Filed 7–1–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–60–NG]

Great West Energy LTD.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Great West Energy Ltd. blanket authorization to import from Canada up to 40 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels

Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4: 30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 25, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of the Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15754 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–118–NG]

Vector Energy (U.S.A.) Inc.; Order Amending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it amended DOE/FE Order No. 699 which, on October 29, 1992, granted Vector Energy (U.S.A.) Inc., blanker authorization to import up to 30 Bcf of natural gas from Canada over a two-year term ending October 31, 1994. The amending order, 699–A, increased the maximum imports to 44 Bcf.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 25, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15755 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–26–NG]

Western Gas Resources, Inc.; Blanket Authorization to Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Western Gas Resources, Inc. to import up to 73 Bcf of natural gas from Mexico and to export up to 73 Bcf of natural gas to Mexico over a two-year period beginning on the date of first deliveries.

This order is available for inspection and copying in the Office of Fuels Programs Document Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 25, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–15756 Filed 7–1–93; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Central Valley Project Notice of Rate Order No. WAPA–59

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Central Valley Project Commercial Firm Power, Peaking Capacity, and Transmission Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by he Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–59 and Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3 placing provisional rates for commercial firm power (capacity and energy) transmission service and peaking capacity from the Central Valley Project (CVP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will remain in effect on an interim basis until Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis or until they are replaced by other rates.

The Under Secretary, DOE, approved the existing rate schedules (CV–F6, CV–FT1, CV–NFT1, and CV–TPT2) on an interim basis, effective on May 1, 1988. FERC approved the existing rates on a final basis by FERC Order (Docket No. EF88–5011–000) dated October 21, 1988.

The existing rates for commercial firm power are derived from collecting 50 percent of the revenues from capacity sales and the remaining 50 percent from energy sales. The provisional rates are the same as the existing rates after adjusting the capacity component for the contract dependable capacity (CDC) Provision of Rate Schedule CV–F6 for the period May 1, 1993, through September 30, 1993. Effective October 1, 1993, the rate design for the provision rate for commercial firm-power service changes to collect 40 percent of revenues from capacity sales (capacity component) and 60 percent from energy sales (energy component) to reflect the greater portion of Western's costs associated with energy. Effective May 1, 1994, the energy component is further separated into a two-tier rate. An energy base rate will be applied to energy sales below a 70-percent load factor. An energy tier rate will be applied to energy sales at a 70 percent and higher load factor. The energy rate above the 70-percent load factor is based on Western's average Northwest purchased energy rate as estimated for this rate case and will not be changed to reflect actual Northwest energy costs. Northwest energy costs are used because supplemental energy purchases are primarily made from the Northwest. The purpose of these changes is to more closely reflect Western's costs associated with CVP capacity and energy sales. The 40/60 split is based on Western's estimated capacity and energy costs. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer load which showed that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent.

Peaking capacity is a new service. The provisional rates for peaking capacity are designed to recover all costs (CVP generation and purchased power) associated with long-term firm peaking capacity service. The peaking capacity rate is the same as the capacity component of the commercial firm-power rate.

The provisional rates for transmission service for other parties over the CVP transmission system are designed to recover costs of the CVP transmission system used in the delivery of that power.

The provisional rates for transmission of CVP power delivered to a CVP firm-power customer by a third party provides for the passthrough of all costs associated with such service to the customer using the service.

A comparison of existing and provisional rates follows:

COMMERCIAL FIRM—POWER RATE SCHEDULE

Capacity	Energy	Composite	% Change
Existing Rate Schedule: CV–F6, Effective 10/01/91–04/30/93[1]			
$7.74/kW/month	16.30 mills/kWh	32.60 mills/kWh	
Provisional Rate Schedule: CV–F7, Effective 05/01/93–09/30/93			
6.45/kW/month	Base: 16.30 mills/kWh Tier: None	28.75 mills/kWh	None.[1]
Effective 10/01/93–04/30/94			
6.22/kW/month	Base: 17.97 mills/kWh Tier: None	29.95 mills/kWh	4.2 Increase.
Effective 05/01/94–09/30/95			
6.22/kW/month	Base: 16.99 mills/kWh Tier: 30.87 mills/kWh	29.95 mills/kWh	None.
Effective 10/01/95–09/30/97			
6.57/kW/month	Base: 17.73 mills/kWh Tier: 34.70 mills/kWh	31.55 mills/kWh	5.3 Increase.
Effective 10/01/97–04/30/98			
7.16/kW/month	Base: 19.33 mills/kWh Tier: 37.46 mills/kWh	34.37 mills/kWh	8.9 Increase.

[1] Rate after CDC Adjustment pursuant to the CDC Adjustment in Rate Schedule CV–F6: Capacity $6.45/kW/month, Composite 28.75 mills/kWh.

PEAKING CAPACITY

[Existing Rate Schedule: None—Provisional Rate Schedule: CV–PC1]

Effective dates	Rates	% Change
05/01/93–09/30/93	$6.45/kW/month	None.
10/01/93–09/30/95	6.22/kW/month	3.5 Decrease.
10/01/95–09/30/97	6.57/kW/month	5.6 Increase.
10/01/97–04/30/98	7.16/kW/month	8.9 Increase.

FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–FT1	$0.481/kW/month	—
Provisional—CV–FT2	0.43/kW/month	10.6 Decrease.

NON-FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–NFT1	1.022 mills/kWh	—
Provisional—CV–NFT2	1.23 mills/kWh	20.3 Increase.

TRANSMISSION OF CVP POWER BY THIRD PARTY

Existing Rate Schedule: CV–TPT2	Passthrough Cost.
Provisional Rate Schedule: CV–TPT3	Passthrough Cost.

DATES: Rate schedules CV–F7, CV–PC1, CV–FT2, CV–MFT2, and CV–TPT3 will be placed in effect on an interim basis on May 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418

Deborah M. Linke, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1545

Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW.,

Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published at 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

These power rates are established pursuant to the DOE Organization Act, 42 U.S.C. 7101 *et seq.*; the Reclamation Act 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887, 891; and other acts specifically applicable to the project system involved.

Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published at 50 FR 37835, September 18, 1985.

The DOE procedures were followed by Western in the development of these commercial firm power, peaking capacity, and transmission rates. A public information forum was held on August 18, 1992, followed by a public comment forum on September 3, 1992. Verbal comments were provided by 5 persons at the public comment forum, and 12 comment letters were received. The comments are addressed in the rate order published with this notice. In addition, an evidentiary hearing on the revenue adjustment clause (RAC) was held on August 25, 1992, and continued on September 18, 1992. Western received the Hearing Officer's findings and recommendations on the RAC dated February 10, 1993. The Hearing Officer recommended that the RAC as modified by Western be included in the rate schedule for the CVP.

Several actions have impacted the revenue requirements for commercial firm power since implementation of the existing rate: (1) California has experienced a 6-year drought which has drawn down water supplies in CVP reservoirs, thus reducing generation. Normal water years are assumed to begin in FY 1995; (2) As a result of several recent settlement agreements between Western and Pacific Gas and Electric Company (PG&E), several outstanding issues have been resolved, resulting in completed or pending monetary settlements; (3) Western's resource mix has changed due to additional long-term Northwest purchase contracts, the Western/PG&E settlement of capacity issues, and additional transmission access to Northwest suppliers; and (4) Congress passed the Shasta Bypass legislation (Pub. L. 101–514) that made purchased power expenses associated with bypassing generation at Shasta Dam because of specific environmental purposes nonreimbursable by the CVP rate payers.

Revisions to the RAC provisions and the power factor adjustment have been included in Rate Schedule CV–F7. The RAC compares projected net revenue with actual net revenue for each fiscal year. If the net difference is positive, a RAC credit is applied to customers' power bills during the next January 1 to September 30 period. If the net difference is negative, a RAC surcharge is applied to customers' power bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of unpaid investment or projected investment payment. The maximum total RAC credit or surcharge on customers' power bills is $20 million annually.

The power factor adjustment included in Rate Schedule CV–F7, renamed the low power factor charge or LPFC, provides that a charge of $2.50 per kilovoltampere reactive will be applied when the average of a customer's average monthly power factor and the peak power factor are not maintained at 95 percent.

The CVP transmission service rates, as provided for by Rate Schedules CV–FT2 and CV–NFT2 have been revised due to changes in the projected transmission facility costs and additional transmission service sales. More detailed information on the changes to the rates are provided in the rate order published with this notice.

Rate Order No. WAPA–59, confirming, approving, and placing the proposed CVP rate adjustment in effect on an interim basis, is issued, and the new Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, April 12, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Assistant Secretary for Conservation and Renewable Energy

In the matter of: Western Area Power Administration Rate Adjustment for Sacramento Area Office, Central Valley Project. Rate Order No. WAPA–59.

Order Confirming, Approving, and Placing the Sacramento Area Office, Central Valley Project Commercial Firm Power, Peaking Capacity and Transmission Service Rates Into Effect on an Interim Basis

April 12, 1993.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 2 to Delegation Order No. 0204–108, published at 56 FR 41835, August 23, 1991, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published at 50 FR 37835, September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Adjusted rate: Existing rate after applying the CDC adjustment.

Assistant Secretary: Assistant Secretary for Conservation and Renewable Energy, DOE.

$/kW/month: Dollars per kilowatt per month.

Capacity component: The component of this rate which sets forth the charges for capacity. It is shown in the power repayment study as a kW/year charge and billed on a dollar per kW/month

basis. The charge shall be applied each billing period to each kW delivered or scheduled to each customer.

Composite rate: Energy rate that combines capacity cost and energy cost.

Contract 2948A: Pacific Gas and Electric Company's contract with Western for the sale, interchange, and transmission of power; Contract No. 14–06–200–2948A, as amended.

Corps: U.S. Army Corps of Engineers.

CDC: Contract dependable capacity. The Capacity Adjustment for Northwest power purchases as used in Rate Schedule CV–F6 under the CDC Charge Adjustment Provision.

CRD: Contract rate of delivery. The maximum amount of capacity that Western is contractually obligated to provide to a customer.

CVP: Central Valley Project.

Curtailable power: Power offered by Western to qualified preference entities which may be curtailed on a real-time scheduling basis by Western and at Western's sole discretion to protect the 1,152 MW load level.

Customer brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order, dated August 1992.

CY: Calendar year.

Diversity power: Firm power made available because of the diversity of Western's customers' peak demands at the time of Western's peak demand. A diversity power customer, at the request of Western, must shed a specified amount of load or reduce its Western schedule at the time of Western's simultaneous peak demand to maintain the customer load level.

Diversity program: The load management measures established by Western and funded by those entities who have elected to participate in the program, by either direct financial contribution or by on-peak period curtailment of Western's power allocation, to allow Western to maintain a contractually specified load level.

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

EA2: Energy Bank Account No. 2, which is an arrangement between Western and PG&E under Contract 2948A.

Energy base rate: Energy rate applied to energy sales below a 70-percent monthly load factor.

Energy component: The component of this rate which sets forth the charges for energy. It is expressed in mills per kWh and applied to each kWh made available to each customer.

Energy tier rate: Energy rate applied to energy sales at a 70-percent and higher monthly load factor.

Existing rate(s): Rates specified in Rate Schedules CV–F6, CV–FT1, CV–NFT1, and CV–TPT2.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year; October 1 to September 30.

Interior: U.S. Department of the Interior.

Intertie: Pacific Northwest-Pacific Southwest Intertie Transmission System-Northern Division.

kV: Kilovolt.

kVar: Kilovoltampere reactive.

kW: Kilowatt.

kWh: Kilowatthour.

LPFC: Low power factor charge.

mills/kWh: Mills per kilowatthour.

MW: Megawatt (1000 kW).

Load factor: The ratio of total energy delivered compared to the maximum energy available during a specified period of time.

Net revenue: Revenue remaining after paying all annual expenses.

Northwest: Northwest United States.

O&M: Operations and maintenance.

Peaking capacity: Power available to assist in meeting that portion of peak load which is above a base load.

PDC: Project dependable capacity as defined in Contract 2948A.

PG&E: Pacific Gas and Electric Company.

PG&E settlement: Settlement agreement between Western and PG&E dated December 31, 1992.

Power factor: The ratio of real (kW) to apparent power (kVA) at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.

Provisional rate(s): A rate which has been confirmed, approved, and placed in effect on an interim basis by the Assistant Secretary.

PURPA: Public Utilities Regulatory Policies Act.

PMA: Power marketing administration.

PRS: Power repayment study.

Project use: CVP power requirements for specific uses.

RAC: Revenue adjustment clause.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Secretary: Secretary of Energy.

Treasury: U.S. Department of the Treasury.

Western: Western Area Power Administration, U.S. Department of Energy.

Withdrawable power: Power that has been allocated to preference entities that may be withdrawn to meet the statutory and contractual requirements of Western.

Effective Date

The provisional rates will become effective on an interim basis on May 1, 1993, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these commercial firm power, peaking capacity, and transmission rates.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On October 7, 1991, Western issued by letter an "Announcement of Central Valley Project Rate Adjustment Process" to all CVP customers. This announcement notified CVP customers of Western's initiation of a rate adjustment process, as well as the date of the first informal customer meeting. At the first informal customer meeting, held on October 31, 1991, Western's staff discussed various options and methods that were being considered for the rate adjustment process and solicited verbal and written comments regarding the options or process.

2. On January 31, 1992, Western issued a letter to all CVP customers acknowledging and thanking those customers who chose to comment on the rate design options and methods presented at the first informal meeting. Enclosed with the letter were copies of all the customer comments. This letter also announced the date of the second informal customer meeting. At the second informal customer meeting held on March 6, 1992, Western's staff presented assumptions used in the development of its CVP PRS and discussed customer questions raised as a result of the first informal meeting.

3. On April 10, 1992, Western issued a letter to all CVP customers requesting their input regarding changes in their purchasing pattern if energy tier rates were implemented.

4. A **Federal Register** notice was published at 57 FR 31709, July 17, 1992, officially announcing the proposed commercial firm power, long-term peaking capacity, and transmission service rate adjustment; initiating the public consultation and comment period; announcing the public information and public comment forums; and presenting procedures for public participation.

5. On July 24, 1992, a customer brochure was mailed to all CVP

customers and other interested persons. This mailing also included a letter announcing the dates of the public information and comment forums as well as a copy of the July 17, 1992, Federal Register notice.

6. At the public information forum held on August 18, 1992, Western explained the need for the rate increase in greater detail and answered questions.

7. A public comment forum was held on September 3, 1992, to give the public an opportunity to comment for the record. Five persons representing customers and customer groups made oral comments.

8. Twelve comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended October 15, 1992. All formally submitted comments have been considered in the preparation of this rate order.

9. On November 2, 1992, copies of all written comments received during the 90-day consultation and comment period were sent to all CVP customers and interested parties.

Concurrently with the rate adjustment process, Western held public proceedings on the proposed RAC in accordance with PURPA, 16 U.S.C. sections 2601–2645. The following summarizes the steps Western took to ensure involvement of interested parties in the PURPA process:

1. A Federal Register notice was published at 57 FR 31708, July 17, 1992, giving notice of hearing procedures, and announcing a prehearing conference and hearing on the RAC.

2. On August 18, 1992, a prehearing conference was held as announced in the July 17, 1992, Federal Register notice.

3. On August 25, 1992, a RAC evidentiary hearing was held. Western's staff issued supplemental testimony regarding the RAC at this hearing based on questions raised at the prehearing conference.

4. On September 18, 1992, a continuation of the first evidentiary hearing was held.

5. Four parties provided testimony during the RAC proceedings.

6. Western received the Hearing Officer's findings and recommendations on the RAC dated February 10, 1993. The Hearing Officer recommended that the RAC as modified by Western be included in the rate schedule for the CVP.

Project History

Located in northern and central California, the CVP consists of eight powerplants, two pump-generation plants, and approximately 1,200 miles of transmission lines.

The initial features of the CVP, authorized in 1935 by the Emergency Relief Appropriations Act of 1935 for construction by Reclamation, included the Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River; the Tracy pumping plant and the Delta-Mendota canal; the powerplants at Shasta Dam and at Keswick Dam with powerlines to bring the power generated to the Tracy pumping plants and to integrate that power into other electric systems; the Contra Costa canal, the Friant-Kern canal, and the Madera canal; and the Delta cross channel.

To help meet the expanding needs in the Central Valley, Congress, in 1944, authorized the American River Division to be constructed by the Corps. In 1949, Congress reauthorized the American River Division to be integrated with the CVP. This division included Folsom Dam and powerplant, Nimbus Dam and powerplant, and the Sly Park Unit. The Trinity River Division, including Trinity Dam and powerplant, Lewiston Dam and powerplant, Lewiston fish facilities, Whiskeytown Dam, Judge Francis Carr powerhouse, and Spring Creek powerplant, was authorized in 1955. The San Luis Unit, including San Luis Dam and reservoir, San Luis canal, Pleasant Valley canal, and the O'Neill and San Luis pump-generators, was authorized in 1960. Three Corps projects, Buchanan, Hidden, and New Melones were authorized in 1962 for integration into the CVP. Western is authorized to market the power made available from the New Melones powerplant. The Auburn-Folsom South Unit, including Auburn Dam, reservoir, and powerplant, the Folsom South canal, the Foresthill Unit, and the Folsom-Malby Unit, was authorized in 1965. The San Felipe Division was authorized in 1967, with the Allen Camp Unit being authorized in 1976.

A significant addition in 1964 was the construction of the 500–kV Intertie of which the CVP has the right to use 400 MW of transmission capacity to import power from the Northwest. Black Butte, another Corps project, was added to the CVP in 1970 by Pub. L. 91–502.

Construction of the California-Oregon Transmission Project will give Western an additional 150–250 MW of transmission to the Northwest beginning in 1993.

Power generated from the CVP system is dedicated first to meeting the power requirements of the project pumping facilities. The remaining capability of the project's power facilities is used to provide commercial power to various preference customers in northern California. These preference customers consist of military and Federal installations, irrigation and Reclamation districts, cooperatives, utility districts, municipalities, and educational and penal institutions of the State of California.

The CVP powerplants have a combined maximum operating capability of about 2,000 MW.

The amount of commercial firm load which can be supplied at present by CVP generation alone is significantly less than the current customer commercial firm load level. In 1951, Reclamation entered into a support contract with PG&E which greatly increased the commercial load serving capability of the CVP. In 1967, that contract was amended and consolidated with a transmission contract into the present Contract No. 2948A. Under Contract No. 2948A, the CVP powerplants and the two pump generation plants were integrated operationally with PG&E's power system. The contract provides that energy and capacity generated by the CVP, along with power imported from the Northwest, in excess of CVP obligations to preference customers, can be banked with PG&E. The contract also provides Western the right to purchase an equivalent amount of capacity and energy from PG&E, at times and in amounts required, when the CVP's power supply is insufficient to meet the CVP obligations to the preference customers. The energy and capacity available under this "banking arrangement" permits the CVP to supply a much greater amount of customer load than would be possible without benefits of such coordination. The contract provides that PG&E, with the Intertie arrangements, will provide support to enable the CVP to supply a simultaneous customer peak demand up to a maximum level of 1,152 MW through CY 2004.

Power Repayment Study

PRSs are prepared by Western each FY to determine if power revenue will be sufficient to pay, within the prescribed time periods, all costs assigned to the CVP's power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12.b, sets forth the PMA's revenue repayment requirements. That section states:

> In addition to the recovery of the above costs [operation and maintenance and interest expenses] on a year-by-year basis, the expected revenue is at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue

producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects or States.

Transmission Service Rate Study

A transmission service rate is charged to CVP customers receiving transmission service over the CVP system for the transmission of non-CVP power. A transmission service rate study was prepared to ensure that the firm transmission service rate is based on the cost of service of the CVP transmission network system as defined in the customer brochure.

The transmission service rate study dated May 1992 indicated that the firm transmission service rate needed to be adjusted from its current level of $0.481/kW/month to $0.43/kW/month for a 10.6-percent decrease.

The change in rate is primarily due to changes in the projected transmission facility costs and an increase in the amount of sales under firm transmission service contracts during this rate period.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

TABLE 1.—COMPARISON OF EXISTING AND PROVISIONAL RATES

[Commercial Firm-Power Rate Schedule]

Capacity	Energy	Composites	% Change
Existing Rate Schedule: CV–F6—Effective 10/01/91–04/30/93 [1]			
$7.74/kW/month	16.30 mills/kWh	32.60 mills/kWh	
Provisional Rate Schedule: CV–F7—Effective 05/01/93–09/30/93			
6.45/kW/month	Base: 16.30 mills/kWh Tier: None	28.75 mills/kWh	None.[1]
Effective 10/01/93–04/30/94			
6.22/kW/month	Base: 17.97 mills/kWh Tier: None	29.95 mills/kWh	4.1 Increase.
Effective 05/01/94–09/30/95			
6.22/kW/month	Base: 16.99 mills/kWh Tier: 30.87 mills/kWh	29.95 mills/kWh	None.
Effective 10/01/95–09/30/97			
6.57/kW/month	Base: 17.73 mills/kWh Tier: 34.70 mills/kWh	31.55 mills/kWh	5.3 Increase.
Effective 10/01/97–04/30/98			
7.16/kW/month	Base: 19.33 mills/kWh Tier: 37.46 mills/kWh	34.37 mills/kWh	8.9 Increase.

[1] Adjusted Rates $6.45/kW/month for the Capacity Component; 28.75 mills/kWh for the Composite Rate.

PEAKING CAPACITY

[Existing Rate Schedule: None—Provisional Rate Schedule: CV–PC1]

Effective dates	Rates	% Change
05/01/93–09/30/93	$6.45/kW/month	None.
10/01/93–09/30/95	6.22/kW/month	3.5 Decrease.
10/01/95–09/30/97	6.57/kW/month	5.6 Increase.
10/01/97–04/30/98	7.16/kW/month	8.9 Increase.

FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–FT1	$0.481/kW/month	—
Provisional—CV–FT2	0.43/kW/month	10.6 Decrease.

NON-FIRM TRANSMISSION RATE

Rate schedules	Service charge	% Change
Existing—CV–NFT1	1.022 mills/kWh	—
Provisional—CV–NFT2	1.23 mills/kWh	20.3 Increase.

TRANSMISSION SERVICE FOR CVP POWER BY THIRD PARTY

Existing Rate Schedule: CV–TPT2.	Passthrough Cost.
Provisional Rate Schedule: CV–TPT3.	Passthrough Cost.

Certification of Rate

Western's Administrator has certified that the CVP commercial firm power, peaking capacity, and transmission service rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The provisional rates have been developed in accordance with administrative policies and applicable laws.

Discussion

Commercial Firm-Power Rates

The CVP provisional rates for commercial firm power incorporate a change in the CVP rate design and are higher than the adjusted rates. The rates are higher because of a need for increased revenues to meet estimated annual expenses. The existing rates are derived from collecting 50 percent of the revenues from capacity sales and the remaining 50 percent from energy sales. The provisional rates are the same as the adjusted rates for the period May 1, 1993, through September 30, 1993. Effective October 1, 1993, the rate design for the provisional rates for commercial firm-power service changes to collect 40 percent of the revenues from capacity sales (capacity component) and 60 percent from energy sales (energy component) to reflect the greater portion of Western's costs associated with energy. Effective May 1, 1994, the energy component is further separated into a two-tier rate. An energy base rate will be applied to energy sales below a 70-percent load factor. An energy tier rate will be applied to energy sales at a 70 percent and higher load factor. The energy rate above the 70-percent load factor is based on Western's average Northwest purchased energy rate as estimated for this rate case and will not be changed to reflect actual Northwest energy costs. Northwest energy costs are used because supplemental energy purchases are primarily made from the Northwest. The purpose of these changes is to more closely reflect Western's costs associated with CVP capacity and energy sales. The 40/60 split is based on Western's estimated capacity and energy costs. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer loads which showed that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent. Further detail concerning the rationale for the revised rate design was provided in the customer brochure.

Several actions have impacted the revenue requirements for commercial firm power since implementation of the existing rates: (1) California has experienced a 6-year drought which has drawn down water supplies in CVP reservoirs, thus reducing CVP generation. Normal water years are assumed to begin in FY 1995; (2) As a result of several recent settlement agreements between Western and PG&E, several outstanding issues have been resolved resulting in completed or pending monetary settlements; (3) Western's resource mix has changed due to additional long-term Northwest purchase contracts, the Western/PG&E settlement of capacity issues, and additional transmission access to Northwest suppliers; and (4) Congress passed the Shasta Bypass legislation (Pub. L. 101–514) that made purchased power expenses associated with bypassing the generators at the Shasta Dam because of specific environmental purposes nonreimbursable by the CVP rate payers.

Because financial impacts from the recently enacted Reclamation Project Authorization and Adjustment Act of 1992 (Pub. L. 102–575) are not known, no estimate has been included in the provisional rates. It is anticipated that either the RAC will offset any impacts or that revised rates will be implemented in the future, if needed.

Revenue Adjustment Clause

The RAC included with the provisional rates compares projected net revenue with actual net revenue for a FY. If the net difference is positive, a RAC credit is applied to the customers' bills during the next January 1 to September 30 period. If the net difference is negative, a RAC surcharge is applied to the customers' bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of unpaid investment or projected investment payment. The maximum total RAC credit or surcharge on the customers' power bills is $20 million annually.

The revised RAC differs from the existing RAC. The existing RAC provides that every 6 months Western will compare projected commercial firm-power revenues with actual commercial firm-power revenues and will compare projected purchased power expenses with actual purchased power expenses. The net difference results in a RAC credit or surcharge on power bills for the following 6-month period with a maximum of $15 million each period. An amendment (approved by FERC Order dated October 21, 1988, Docket No. EF–88–5011–00) to the existing RAC provided that a RAC credit would not be applied if the PRS showed a deficit in repayment of annual expenses for the prior FY, and that a RAC surcharge would not be applied if the PRS showed surplus net revenue. No projected RAC revenue adjustments are included in the PRS because Western assumes that projected net revenues are accurate.

Low Power Factor Adjustment

The power factor adjustment included with the provisional rates, renamed the low power factor charge or LPFC, provides that a charge of $2.50 per kVar will be applied when the average of a customer's monthly average power factor and the peak power factor is not maintained at 95 percent. To determine the LPFC, the customer's peak and monthly average power factors are averaged to determine the customer's mean power factor. If the mean power factor is less than 95 percent, the customer pays a charge calculated by multiplying the customer's peak demand by a kVar/kW rate, as provided in Rate Schedule CV–F7. The kVar/kW rate is derived by multiplying the applicable kVar/kW multiplier, as provided in the customer brochure (kVar/kW multiplier at a certain power factor less than 95 percent), by the $2.50 charge. The kVar/kW multiplier represents the additional kVars which would be required to raise the customer's power factor to 95 percent.

The existing power factor adjustment provides that a surcharge of 0.25 percent will be assessed against the total monthly capacity and energy charges at each point of delivery for each percent or major portion thereof that a customer's power factor at such point of delivery is below 95 percent, lagging or leading.

Additional information regarding the LPFC is provided in the customer brochure. No projected LPFC revenue is projected in the PRS because Western assumes that the customers will make efforts to correct power factor deficiencies and therefore incur no charges.

Transmission Service Rates

The CVP transmission service rates have been revised due to changes in projected facility costs and additional transmission service sales. Intertie

facilities are no longer included in determining the CVP transmission rates because Intertie facilities are not anticipated to be used to deliver non-CVP power over the CVP transmission system. This resulted in a change in investment and O&M expense. The basic rate design for transmission service is the same as the existing rate.

Total Operating Revenues

The total operating revenue derived from the adjusted rate and provisional rate revenue for the CVP are as follows:

	Total operating revenues	
	Adjusted rate (FY 1992)[1]	Provisional rate (FY 1994)[1]
Total Operating Revenues	[2]$263,874,947	$269,501,770

[1] Years represented are the last full year the existing rate is effective and the first full year the provisional rate will be effective. The intervening year, FY 1993, is not used because the existing rate expires on April 30, 1993, resulting in a mixture of existing and provisional rates for the year.

[2] Actual revenues.

Increased revenues are necessary to satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

Statement of Revenue and Related Expenses

The following table 2 provides a summary of revenue and expense data through the cost evaluation rate period.

TABLE 2.—CENTRAL VALLEY PROJECT, COMPARISON OF COST EVALUATION RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	FY 1988 PRS 1993–98	FY 1992 PRS 1993–98	Difference
Total Revenues	1,648,715	1,791,420	142,705
Revenue Distribution:			
O&M	144,288	219,822	75,534
Purchased Power	1,288,119	1,328,942	40,823
Other	109,441	91,438	<18,003>
Interest	39,252	48,032	8,780
Investment Repayment	67,615	103,186	35,571
Capitalized Expenses	0	0	0
Prior-Year Adjustment	0	0	0
Total	1,648,715	1,791,420	142,705

Basis for Rate Development

The provisional rate for CVP commercial firm power is designed to collect 40 percent of revenue from capacity sales and 60 percent from energy sales. The cost to individual customers will vary because of differences in individual customer load factors.

The provisional rate for commercial firm power contains a $/kW/month firm capacity component and a mills/kWh energy component. In addition, the firm energy component contains an energy tier rate at 70-percent and higher load factor, which is based on the CVP projected Northwest energy purchases. The load factor is computed based on the lesser of the customer's (1) maximum demand for the month, or if a scheduled customer, the maximum scheduled demand for the month; or (2) the CRD. Only power offered under Rate Schedule CV–F7 will be used in the calculation. The commercial firm-power rates will be phased in as shown in table 1. Table 1 provides the effective dates and percent change in the composite rate. The rate approval period terminates, at the latest, on April 30, 1998.

The provisional rates for firm and nonfirm transmission service are designed to recover costs of the CVP transmission system used in the delivery of non-CVP power. The transmission service rates and percentage change from the existing rates are shown in table 1.

The provisional rate for transmission service for CVP power by a third party provides for the passthrough of all costs associated with such service to the customer using the service. This rate proposal is the same as provided in the existing Rate Schedule CV–TPT2.

The provisional rates for peaking capacity are designed to recover all costs (CVP generation and purchased power) associated with long-term firm peaking capacity service. Peaking capacity is a new service. The peaking capacity rates are the same as the capacity component of the commercial firm-power rate. Normally associated energy will be returned unless provided for by contracts. If Western elects to sell surplus peaking capacity in the future under short-term agreements, such available sales would be sold at short-term power rates.

Comments

During the 90-day comment period, Western received 12 written comments either requesting information or commenting on the rate adjustment. In addition, five persons commented during the September 3, 1992, public comment forum. Four persons provided testimony during the RAC evidentiary hearing proceedings. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Arvin-Edison Water Storage District (California)
Broadview Water District (California)
Calaveras Public Power Agency (California)
NASA—Ames Research Center (California)
Northern California Power Agency (California)
Palo Alto, City of (California)
Roseville, City of (California)
Sacramento Municipal Utility District (California)
Santa Clara, City of (California)
Tuolumne County Public Power Agency (California)
U.S. Department of Energy, San Francisco Field Office (California)

Westlands Water District (California)

Representatives of the following organizations made oral comments:

Arvin-Edison Water Storage District (California)
Northern California Power Agency (California)
Palo Alto, City of (California)
Sacramento Municipal Utility District (California) 2 Representatives

Representatives from the following organizations provided testimony during the RAC proceedings:

Arvin-Edison Water Storage District (California)
Northern California Power Agency (California)
Sacramento Municipal Utility District (California)
Santa Clara, City of, and Modesto Irrigation District (California)

Most of the comments received at the public meetings and in correspondence dealt with the commercial firm-power rate design, energy tier rate, rate period, RAC, and the PG&E settlement. Discussion of comments will be grouped by these issues, with all other comments being placed under the heading of "other." In some cases Western will address several comments with one response. The comments, paraphrased for brevity, and responses are presented below. Specific comments are used for clarification, where necessary.

Commercial Firm-Power Rate Design

The following comments all relate to the proposed CVP rate design of recovering 40 percent of the revenue requirement from capacity sales and 60 percent from energy sales. Several comments which supported the rate design opposed the proposed transition period.

Comments: A 40-percent capacity and 60-percent energy revenue split is reasonable.

Reconsider the magnitude of the shift. It is unfair to high-load-factor customers.

Western should not alter its rate design. The customers are familiar with the present rate design and have structured their customers' rates to reflect the costs incurred.

Rates should be based on Western's actual cost. Western's analysis has indicated that 33 percent of Western's cost is a result of capacity and 67 percent of energy. Another comment indicated that another Western study showed that 27 percent is a result of capacity and 73 percent of energy. The 40/60-percent split does not reflect Western's actual cost of supplying capacity and energy. The composite rate is still decreasing at load factors of 70 to 100 percent because too much weight has been placed on the demand charge.

Response: Western was not convinced by comments that its proposed rate design should be changed to collect greater revenue from capacity or that Western should maintain the existing 50/50-percentage revenue split. The CVP customers have already adjusted to a change in the capacity/energy revenue split because the existing rate of $7.74 per kW/month for capacity, when adjusted for the CDC adjustment, changed to $6.45/kW/month for the period October 1, 1992, through March 30, 1993. The first CDC adjustment was implemented beginning May 1, 1992. The CDC adjustment rate results in an approximate revenue split of 43 percent to capacity and 57 percent to energy.

Western's rate design represents its actual costs associated with providing capacity and energy to all CVP customers. Western prepared different studies to determine a reasonable revenue split between capacity and energy. The 33/67-percentage split that the commenters are referring to is the result of a study provided in the customer brochure that allocated fixed cost to capacity and variable cost to energy using FY 1990 financial data. Investment costs and purchased power costs for capacity for which Western receives capacity credit under Contract 2948A were allocated to the fixed-cost category. All annual expenses and all other purchased power costs were allocated to the variable category. The 27/73-percentage resulted from an earlier informal study based on the same allocation method but using different financial data. This study was requested by the commenter. No further study was prepared to analyze the separate costs as to their fixed or variable nature. Further analysis would be open to differences of opinion as to what is a fixed or variable cost.

Other studies Western performed analyzed CVP annual purchased power expenses by allocating cost based on projected cost of capacity and energy. The results of these studies were also provided in the customer brochure. The annual expense study showed that, depending on the year being analyzed, Western's cost of capacity or energy varied from 40 to 45 percent for capacity and 55 to 60 percent for energy. Based on the various studies and comments received from the CVP customers during the informal rate process, Western proposed the rate design that allocated 40 percent of the CVP revenue required to capacity and 60 percent to energy. This rate design reflects Western's cost of capacity and energy to provide power to all CVP customers, not an individual customer's consumption of capacity or energy. The impact on individual customers will vary depending on that customer's usage of capacity or energy from the CVP.

Some comments attempted to put blame for Western's capacity or energy costs on a certain type of user. A high-load-factor customer stated that the low-load-factor customers consume on-peak; therefore, the low-load-factor customers are responsible for Western's higher energy costs (see comment under Energy Tier Rate). A low-load-factor customer claims that the high-load-factor customers force Western to buy more power to supplement that being generated by the CVP powerplants. It is Western's position that Western has an obligation to meet all its contractual commitments and that the capacity/energy revenue split coupled with the energy tier rate, as discussed in other responses, recognizes Western's overall cost of power.

Comment: Adopt a rate structure that will provide rate stability and eliminate the rate spike in FY 1993.

Response: Retaining a portion of the PG&E settlement revenue eliminates the proposed rate spike in FY 1993, which will provide greater rate stability. Further discussion on the rate design can be found in the customer brochure and in the following response.

Comments: There should not be a transition period. There was no transition when Western went to the existing 50-percent capacity and 50-percent energy split for the previous rate design changes.

Western's low-load-factor customers have paid substantially higher rates than other customers over the past 5 years due to the existing rate design. There is no justification to prolong this inequity.

Response: Western was convinced by comments that it was inappropriate to phase in the change in the capacity and energy revenue split over 2½ years. The change to a 40/60-percentage split in the rate design will take effect on October 1, 1993. Due to adjustments in prior-year expenses from the PG&E settlement affecting FY 1993 net revenues, Western is maintaining the adjusted rates until September 30, 1993.

Energy Tier Rate

Comments: An agricultural customer's monthly energy use is dependent upon the timing and amount of water supply available; therefore, the energy use cannot be altered. An energy tier rate creates a penalty for load management. An energy tier rate is a disincentive to reduce monthly peak load. The energy tier rate appears inconsistent with the energy efficiency rate making standards

applicable to Western under PURPA (16 U.S.C. 2621, 2625) and conflicts with goals of Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275, 7276).

Response: Western does not believe that the energy tier rate is inconsistent with the PURPA (16 U.S.C. 2621,2625) or the goals of Title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275,7276). Western's revised energy rates are designed to recover cost of service. The energy tier rate is designed to apply a higher energy rate to any CVP customer purchasing energy at a Western load factor of 70 percent and higher. The 70-percent load factor tier was selected after reviewing the historical and projected average CVP generation and preference customer loads. Based on this examination, it was determined that both the average preference customer system load factor and the CVP average load factor were approximately 70 percent. The energy tier rate represents Western's average energy cost from Northwest suppliers because Western uses a combination of firm and nonfirm Northwest energy purchases to support the CVP generation. Like the change in the capacity/energy revenue split which was discussed in other responses, this change may have an impact on individual customers, but its intent is to represent Western's overall cost of providing service.

Comments: Recommend using a 60-percent capacity factor based on CRD instead of a 70-percent monthly load factor.

Response: Western would have no justification to select a 60-percent capacity factor for the basis of its energy tier rate. The 70-percent load factor was selected because it reflects the preference customer average load factor served by the CVP. A CVP customer is only charged for total CRD when it is used. Western does not believe it is appropriate to use a capacity amount that is not being purchased by the customer to calculate an energy cost; therefore, actual monthly demand was selected rather than a customer's CRD. The customer who cannot use its full capacity entitlement will benefit in some months from the lower capacity rate, resulting from the revision in capacity and energy rates.

Comments: Base the energy tier on actual cost rather than an arbitrary load factor. The first tier could reflect CVP produced energy and EA2-priced energy with the next tier reflecting Northwest and other purchases.

Response: As discussed in other responses, Western did not arbitrarily select the 70-percent load factor or its energy tier rate. Western did several studies to determine an appropriate method for its rate design, including the solicitation of comments and suggestions from its customers prior to beginning the CVP rate process and during the formal rate process. Western selected the average purchased energy cost from the Northwest to set the rate for its energy tier rate because all customers are benefiting from CVP support energy purchases from the Northwest. The energy tier rate represents the average cost to Western for purchasing support energy from the Northwest to support its commercial firm-power sales. Western did not select tier rates based on the marginal cost of individual resources as this comment suggests because all the customers are benefiting from all resources of the CVP, not a specific resource. If Western markets different types of power services in the future, the proposed tiering may be considered.

Comments: Western may be buying more energy because of the drought not because of high-load-factor customers.

Eliminate the energy tier rate. There is no theoretical legitimacy for the energy tier rate. The energy tier rate is based on an assumption that only customers at a 70-percent and higher load factor are responsible for higher priced energy purchased in the Northwest. Efficient pricing requires that all customers pay the same rate except for differences in voltage delivery levels for energy purchased at the same point in time. Differences in marginal energy costs are masked by the CVP rate. High-load-factor customers generally take more energy off-peak. Costs to these customers are lower not higher. An energy tier rate moves prices in the wrong direction.

Western is under a mandate to sell power to its preference customers at cost-based rates, not to juggle rates to reflect power costs in the market. A high-load-factor customer is not necessarily more expensive to serve than a low-load-factor customer.

Western's tiered energy proposal is supported as an incentive to reduce customers' energy use and return Western's system to a load-resource balance. It will ensure decreased withdrawals from EA2. This valuable shaping resource could then be preserved.

Response: Western concurs that it is buying more energy because of the drought, but Western is also buying more energy to support the energy demands of its customers. In analyzing historical load data, Western noted that some CVP customers are purchasing energy from Western at load factors greater than the customers' own system load factors. As discussed in other responses, Western did not design its energy tier rate on the assumption that only customers at 70-percent and higher load factor are responsible for higher priced energy or that these users are marginal customers. The energy tier rate was designed to reduce the impact of purchasing CVP support energy on all customers. Only those customers who purchase energy from Western at 70-percent and higher load factor pay the energy tier rate. All energy up to the 70-percent load factor is purchased at the energy base rate. The energy composite rate is only slightly higher than the energy base rate.

Comments: Western solicited customer comments regarding consumption of Western's resource at hypothetical rates at a 50-percent capacity factor and low differential between tier rates, but subsequently proposed a rate structure with a 70-percent capacity factor and high differential. Customer consumption cannot be predicted based on the survey. A 2-year rate would help to deal with this uncertainty.

What has Western done to show that if high-load-factor customers switch to other sources for their energy it will reduce Western's cost more than Western's revenue?

Response: Since several customers indicated informally to Western's staff that they may switch to another resource if Western added an energy tier rate, Western solicited input on this subject by asking customers how they would change their purchases from Western. In a letter dated April 10, 1992, Western provided the customers with estimated rates under several rate design scenarios. The rate design scenarios, as the commenter points out, were based on energy tier rates at 50-percent load factor. The letter clearly stated that the 50-percent load factor represented a midrange of possible load factor tiers. Western received minimum response to its letter. Western concurs with the comment that consumption could not be predicted based on the responses. The responses Western did receive merely restated what had already been said informally—that some customers may switch resources.

The overall rate design Western selected provides higher energy tier rates than used in the April 10, 1992, letter; but the proposed design has a relatively flat impact on the CVP composite rates for higher load factor customers. Western believes that if the rate design reduces Western's energy sales it will also reduce Western energy purchases. Since Western purchases

from a mixture of energy resources at different rates and is projecting revenue from an energy tier rate based on an average purchase rate, the impact on revenue could swing from undercollection to overcollection over a period of time. However, the impact on repayment should be minimal. Western does not concur that a 2-year rate would help deal with this uncertainty and believes that the RAC will compensate for any difference in Western's projection.

Rate Period

Western received several comments proposing that Western adopt a 2-year rate period rather than the 5-year period. Some of these same comments indicated that a 2-year rate should be adopted instead of the RAC. However, some comments opposed a 2-year rate period at this time. Specific comments follow:

Comments: Western feels it is required to have a 5-year rate period. Nothing in DOE Order RA 6120.2 requires a 5-year rate period. The uncertain situation now facing the CVP does not lend itself to reliable projections for ratemaking purposes for a 5-year period. An examination of historical versus actual results reveals a degree of variance in Western's revenues and expenses which could reflect a high degree of variability in the operational environment. If Western retains a 5-year rate period, adopt a requirement for a rate adjustment process or review every 2 years.

More frequent general rate adjustments would prompt more interaction between Western and its customers. Shorter rate periods allow Western to compensate for a changing market, load, and environmental conditions. Western is encouraged to biennially disseminate 10- or 20-year budget and sales forecasts, providing more stability.

If the 2-year period was adopted, Western could increase the rate in the PRS after the second year.

Response: Western reviewed the comments recommending a 2-year rate period but does not believe it will give the customers the results they are expecting. Western concurs that a 5-year rate period is not required by DOE Order RA 6120.2, but paragraph 12 of DOE Order RA 6120.2 does require that expected revenues be adequate to repay all costs to the end of the repayment period, which is the year 2048 for the CVP. Applying this provision means that expected revenues from the power rates would have to be higher initially due to the higher annual expenses projected after the second year of the study period. The longer rate period allows Western to phase in rates during the 5-year period because the rate in the fifth year is high enough to meet future repayment obligations. If Western adopted a 2-year rate, the composite rate in the second year and thereafter would be 33.04 mills/kWh which is greater than the provisional rates through FY 1997. This rate would result in surplus revenue in FY 1995 to FY 1997 that would repay investment earlier than required. This result conflicts with the comment from the same commenter that questioned Western's projections of repaying investment costs before it was necessary.

Western believes that increasing the rate after the 2-year rate period is inappropriate based on FERC findings on the last CVP rate approval (Docket No. EF88–5011–000). FERC states:

> With respect to the level of the rates in the instant filing, however, the PRS prepared by WAPA deviates from DOE and Commission policies by assuming and incorporating a 1 mill/kWh increase in rates in 1996, which would occur beyond the requested 5-year rate approval period. This assumption is apparently designed to track WAPA's costs more closely than can be accomplished under the usual PRS concept. Such an assumption would completely undermine the basis for the PRS concept, which has been applied by the PMA's for over 20 years. The Commission's regulations state that," . . . the Administrator must provide a PRS which uses the level of revenues produced by the proposed rates." . . . future filings should comply with DOE and Commission regulations.

Western further believes that because most of the uncertainty with repayment of the CVP is related to purchased power expenses, the RAC is a better method to assure repayment than a 2-year rate period. This position was supported by the Hearing Officer's recommendation on the RAC dated February 10, 1993. In addition, the execution of the PG&E settlement lends some stability to Western's projection of purchased power expenses.

Western appreciates the customers' concerns about future markets, load, and environmental conditions having potential impacts on CVP repayment. Although Western is requesting a 5-year rate approval period, this does not mean that revised rates cannot be implemented before the end of the approval period. Western is required by DOE Order RA 6120.2 to prepare a PRS annually to determine if the rates are adequate. If it is determined that the rates are not adequate, Western must prepare a plan of action, which may include a proposed rate adjustment. In response to customer concerns, Western will report to its customers, at least annually, the status of the CVP repayment after the preparation of the annual PRS, normally prepared in December. If necessary, Western will hold an informal customer meeting, similar to the meetings held before starting this rate process, to discuss the results of the PRS, the revenue and expense projections used in the PRS, and Western's plan to adjust rates if that is necessary.

Revenue Adjustment Clause

Many of the comments on the RAC were presented during the evidentiary hearing process on the RAC. Since the RAC is an integral part of the CVP rate, the comments received during the evidentiary hearing process are being incorporated into the rate process.

Comments: The $20 million RAC cap may be inadequate to balance Western's cash-flow. If a surplus builds up, the surplus may be used prematurely to pay off 3 percent Treasury-interest debt.

Limit any RAC surcharge to an amount that, when combined with a CVP rate increase, will never exceed a specific annual percentage increase.

Support revision of the RAC from a 6-month to 12-month period with a maximum RAC of $20 million.

The RAC is difficult for customers to budget. It forces prudent customers to carry Western's contingency funds.

The lagged feedback mechanism of the RAC may trigger oscillating cash-flow for customers.

Separate the PG&E settlement from the RAC.

Response: In light of the comments and the execution of the PG&E settlement, Western has modified its RAC proposal as follows:

1. The impact from the PG&E settlement has been deleted from the RAC. Adjustments resulting from the PG&E settlement will be separate from the RAC.

2. The proposed annual carryover has been eliminated. The RAC will be limited to the results in the year calculated only. Since Western is retaining a portion of the PG&E settlement toward repayment of investment, the carryover is not necessary.

3. The RAC will not be effective until October 1, 1993 (FY 1994), with the first RAC credit or surcharge applied beginning January 1, 1995. The adjustment in the PRS for the PG&E settlement will assure repayment of annual expenses and adequate repayment in FY 1993. A RAC for this period is not necessary. However, revenue adjustment for other purposes may be allocated at any time.

4. The RAC surcharge will be no greater than the annual deficit plus the lesser of 1 percent of the unpaid investment or projected net revenue. This change is due to the fact that in some years the projected net revenue is less than 1 percent of the unpaid investment.

All other provisions of the proposed RAC explained in the customer brochure will be included in the RAC. With these revisions, the customers can be assured the RAC cannot impact their charges from Western until after January 1995. This should provide the customers with greater rate stability in the near term. Thereafter, any RAC credit or surcharge will be limited to a maximum of $20 million annually to be recovered from all CVP commercial firm-power customers.

Comments: Including project O&M costs in the RAC provides insufficient incentive to control O&M costs.

The RAC would include variances in O&M costs caused by project use and transmission customers. Variances in these O&M costs should be removed from the RAC.

The RAC should be modified, at the very least, such that shortfalls in project-use revenues are not included if such inclusion results in a RAC surcharge.

Response: Western has changed its RAC because the existing RAC was based on a comparison of commercial firm-power revenues and purchased-power expenses. This comparison could result in revenue credits when the CVP repayment was deficit due to changes in other revenue or expense categories, such as O&M expenses. It also could create a surcharge during a period when the CVP repayment was surplus. In order to eliminate this deficiency, Western is adopting a revised RAC based on projected net revenue compared to actual net revenue.

Western concurs that variances in projection of any revenue or cost may trigger a RAC. The RAC, however, will not create a deviation in the cost of service. Deviations in projected O&M expenses would have the same impact on future rates as it will have on the RAC. To control Western expenses, Western has implemented cost containment policies Western-wide. In addition, Western must request appropriations from Congress for all its O&M expenses. It is these actions that control O&M expenses. In any case, if the rates are inadequate to repay the actual annual expenses, including O&M, a rate adjustment would need to be implemented. The RAC merely allows Western to collect up to a $20 million shortfall more quickly than does a rate adjustment.

A commenter also indicated that a variance in O&M costs caused by project use and transmission customers could cause a revenue adjustment and recommended that these O&M costs should be removed from the RAC. Western is required to collect adequate revenue from its power sales to recover all costs. Other services merely provide revenue to assist in repayment. Transmission service rates have been designed to collect revenues to offset the average cost associated with transmission facilities normally recovered through power sales, not to shift repayment responsibility to transmission service customers. The commercial power sales must recover adequate revenue to repay all expenses; therefore, only the commercial power sales are included in the RAC.

Project-use revenues are slightly different than transmission service in that project-use sales are required to recover actual O&M expenses.

Western and Reclamation are developing procedures to assure that project use picks up the proper allocation of CVP operating expenses. The procedures will include a method of adjusting from projected to actual expenses. When procedures are agreed to, the PRS will reflect any adjustments resulting from the procedures; thus the RAC will recognize this adjustment.

Comments: The positive feedback mechanism of the interest, cost savings, or earnings that will accrue on either deficits or surpluses will exacerbate the RAC cash-flow.

The RAC can pay credits to customers when the CVP is deficit.

Response: Some commenters expressed a concern that a RAC adjustment in any one year could create an opposite RAC in the next year. During the RAC evidentiary hearing, Western indicated that this could occur if proper accounting was not set up to account for the RAC. To prevent this from occurring, Western will first prepare a PRS without any RAC adjustment to determine the RAC for the year. This will assure that proper revenues and interest are calculated. Once the RAC amount is determined, accrual accounts will be set up to show collection or payment from the RAC within the year in which the RAC was calculated. A second PRS will be prepared with the RAC adjustment included in a separate column of the PRS, thus balancing the revenue in that year only. This will prevent a RAC from affecting the next year's net revenue amount.

PG&E Settlement

Comments: An allocation to investment repayment of any overcollection of revenues because of the PG&E purchased power costs should not prepay CVP debt. Restrict allocation to debt repayment that is in arrears only.

At least one-half of the PG&E settlement Western receives should be returned to the CVP customers at the time of settlement, not over a period of up to 3 years.

Western should set up contingency reserve funds.

Response: As stated in the discussion on the RAC, the PG&E settlement refund issue will be separated from the rate process. The PG&E settlement resolves several outstanding billing issues between Western and PG&E. As a result of the settlement, PG&E will pay Western $44.6 million plus interest accrued from August 24, 1992, to the date payment is made to Western. Western will pay PG&E $118.35 million plus interest accrued from August 24, 1992, to date paid. The actual amount paid will not be known until after all interest is calculated and payment is made.

As explained in the customer brochure, the payments by PG&E and Western resolve some longstanding capacity disputes as well as rates for capacity purchases by Western from PG&E. The payment from PG&E to Western is a refund plus interest on payments made by Western for capacity purchased from January 1, 1985, through April 30, 1988. The payment from PG&E results from Western and PG&E agreeing to the methodology for calculating PG&E's thermal rates under a letter agreement dated February 7, 1992, and approved by FERC on October 29, 1992 (Docket No. ER92–457–000).

The payment from Western to PG&E is for capacity purchases by Western from May 1, 1988, through December 31, 1992, as agreed to by the parties in the PG&E settlement.

This settlement has a major impact on the CVP repayment and rates. The existing rates were based on the actual payments made to PG&E from 1985 to 1987 and estimated costs thereafter. For the existing rates, Western estimated capacity costs to PG&E during the cost evaluation period to be about $248 million. The actual cost will be dependent on the final payments made by Western for the same period, which will be substantially lower than estimated. Western stopped making actual payments to PG&E in 1988. Thereafter, Western estimated the potential payments to PG&E and

accrued the expenses in financial documents and the PRS.

During this same period, Western implemented the RAC to assure timely repayment of the CVP. One aspect of the RAC provided that an overcollection of revenue of up to $15 million every 6 months would be returned to the customer through revenue credits on customer power bills. The RAC was based on a comparison of actual revenue to projected revenue and a comparison of actual purchased-power expenses to projected purchased-power expenses. The net difference would result in a revenue credit or surcharge. Because Western did not have actual purchased-power expenses for PG&E capacity purchases, Western used the accrued expenses for purposes of the RAC, which resulted in Western applying $53.8 million in RAC credits and $0.6 million in RAC surcharges for the period November 1, 1988, to March 31, 1993.

If actual expenses were known, the customers may have been entitled to larger revenue credits, but such credits would have been limited to $15 million biannually. Any difference greater than $15 million would have flowed through the PRS as revenue. If total revenue in that year was greater than annual expenses, all remaining revenue would have been applied to repayment of a deficit or investment. Assuming that the $15 million limit would have been reached each period, the customer could have received up to $82 million more credit for the period FY 1988 to 1992. Since the PG&E settlement provides a lump-sum payment by Western for this same period, Western cannot go back and determine in what RAC period the customer may have been entitled to additional RAC credits.

As stated earlier, the existing rates were developed to collect adequate revenues to repay a projected amount for PG&E capacity purchases, but the rate was also developed to collect adequate revenues to make projected deficit and investment payments. In some years during this period, either inadequate or no payments were made on investment. The CVP repayment fell behind its projected repayment by over $33 million.

Normally, Western cannot return revenue to customers that it collects as a result of applying a rate to power sales. Over or undercollection of revenue is adjusted through future rates or, in the case of the CVP, through applying a RAC to future sales. In this situation, Western cannot determine the specific amounts that the customer may have received in revenue credit due to application of the RAC or the specific amount that may have flowed through the PRS as revenue available for repayment of investment. Therefore, Western has concluded that because the customers may have been entitled to greater revenue credits during the existing rate period, the difference of any settlement amount from the PG&E settlement will be shared with the customers and part reapplied in the PRS to repay project costs, thus lowering the CVP rates. Western estimated that about $65 million should be retained for CVP repayment. If revenue credits on power bills are chosen as the means to share an adjustment with the CVP customers, the revenue credit will be in addition to a RAC adjustment.

Western's position will provide adequate revenues to repay the approximate $33 million shortfall in repayment of investment, FY 1993 projected payments, and reduce the investment payments to a minimum amount for FY 1994 and FY 1995. This allows Western to minimize rates and still meet the goal of averaging about $10 million annually toward repayment of investment during the cost evaluation period of 1993 to 1998.

The specific method of allocating the difference to the customers will be developed with the customers outside the rate process.

Other

Comments: The acceptable power factor should be set at 85 or 90 percent. Reduce the magnitude of the billing impact from the LPFC.

Response: Western selected the 95-percent power factor for its LPFC because Contract 2948A requires a 95-percent power factor. A power-factor adjustment (surcharge) was first implemented with the existing rates effective May 1, 1988. The power-factor surcharge was delayed until after June 1989 to allow the CVP customers time to implement power-factor improvement programs. Some customers reacted to the power-factor surcharge program by improving their power factor. Those customers that did not implement power-factor improvement programs have incurred the power-factor surcharge since June 1989. Western believes that this is ample time for a customer to take action to improve its power factor. The magnitude of the revised charge is appropriate to encourage improved power factors.

Comments: Curtailable power should be sold at discount rates.

Response: Western believes that the curtailable power this commenter is referring to is Western's withdrawable power and diversity power. In order to maximize the CVP resources, Western has entered into firm-power sales contracts for power that is withdrawable after a specific notification period. Although Western concurs that this withdrawable power does not have the long-term commitment of power that is not subject to withdrawal, it is a power resource available on a long-term firm basis from Western until withdrawn. Also, diversity power is allocated to certain customers who can reduce their loads at the request of Western at the time of Western's simultaneous peak. For this service, the customer benefits by receiving an additional allocation of CVP power and, at the same time, prevents the permanent withdrawal of the customer's allocation of withdrawable power. For these reasons, Western believes it is appropriate to apply the commercial firm-power rate to withdrawable power and diversity power.

Comments: The Diversity Program compensation to National Aeronautics and Space Administration, Ames Research Center (NASA-Ames), should be increased. NASA-Ames should pay only the CVP system composite rate for all energy above the "protection level of 27 MW provided by NASA-Ames."

Response: The allocation of diversity power and the compensation to NASA-Ames for its participation in the Diversity Program are outside of this rate process.

Comments: The assumption that customers' contracts are not renewed in 2004 causes rates to be set at a level sufficient to repay investment before it is due.

Response: It has been a long-standing policy to assume for repayment study purposes that the current firm-power contracts will terminate in 2004 and that the CVP will then sell power only from CVP generation. The basis of this assumption is that Contract 2948A terminates in 2004 and a new marketing plan may be adopted by Western. This assumption does not cause rates to be set at a level to repay investment before it is due. The PRS assumes a levelized repayment of investment through the end of the repayment period, regardless of the amount of power being sold.

Comments: Peaking capacity is priced above its production cost. Peaking capacity should be priced at the cost incurred to produce the capacity component of CVP firm power. This would make the product competitive and allow all CVP customers to share in the benefits. These benefits would result in reduced firm-power rates because the capacity cost is already recovered in the rates. CVP customers are unlikely to buy capacity from Western when the

Bonneville Power Administration rates would be lower for the identical capacity product.

Response: Western's commercial firm-power rates reflect Western's costs associated with providing capacity or energy to its customers. Western would be required to supply long-term firm peaking capacity under the same conditions that it provides other firm power; therefore, it is appropriate to charge the same rate. Like other PMA's, Western needs to set its firm-power sales at rates adequate to recover its costs. If Western elects to sell surplus peaking capacity in the future under short-term agreements, such available sales would be sold at short-term power rates.

Comments: Western's projected price of energy purchases from PG&E is too high and should be reduced.

(a) The EA2 credit is too low.

(b) PG&E thermal rates are too high. Western assumes gas and oil prices escalate at an average of 9.35 percent, which is about double the industry estimates. Seven-percent escalation factor seems high (factor applied to PG&E partial requirements rate).

Northwest costs are not justified or supportable and need to be reduced.

Response: Western made several changes to its estimated rates used in projecting the CVP purchased-power expenses, substantially reducing the projected purchased-power costs used in determining the provisional rates for commercial firm power. Based on the PG&E settlement, PDC has been set at 870 MW. The 1993 PG&E thermal-rate estimates were provided by PG&E. Estimated PG&E thermal rates thereafter have been developed based on the rate design agreed to in the Western/PG&E Agreement dated February 7, 1992 (Contract No. 92–SAO–10106) and the PG&E long-term estimated costs provided in its 1992 Electricity Report (ER92). Revised estimates of PG&E thermal rates assume average water years. Western used PG&E's estimated mix of gas and oil for its fuel projections but used DRI-McGraw Hill inflation factors, which were lower than PG&E's estimates. The EA2 rates were developed by entering the estimated thermal rates and estimated withdrawals and deposits into the EA2 computer program used by both PG&E and Western. The EA2 credit is based on the weighted average rate paid by PG&E for the energy balance in the account less PG&E's average cost of thermal energy from 1967 to the current month.

Western's projected cost of other Northwest power was also modified. Revised costs have been limited to the estimated cost of nonfirm energy only. The rates for nonfirm energy were developed based on Western's 1992 average cost, escalated at the average yearly increase for the period 1988 through 1992.

Comments: The recent PDC agreement (PG&E settlement) may add an expensive capacity resource for Western. Western should tier its capacity rate similar to the energy rate. The first tier being CVP O&M, interest, repayment, and Northwest capacity costs and the second tier should be at the PG&E cost.

Response: Western does not believe that the capacity rates should be tiered in the manner recommended. Western stated in a separate response to a similar comment on tiering for energy that all CVP customers are benefiting from all the resources and costs; therefore, rates should not be allocated based on a specific resource. Since each CVP customer is limited to a specific CRD, no customer is receiving a greater benefit from Western capacity purchases over another customer.

Comments: We support the cost-based rates for transmission service. Western should guarantee direct-service CVP customers bidirectional transmission access and net scheduling. If unidirectional rates mean halving the rates, then provide unidirectional rates.

Response: The availability of transmission and type of service will be determined on a case-by-case basis outside the rate process. The CVP transmission service rates will be applied to the maximum rate of delivery provided in the transmission service contract. Unidirectional rates does not mean halving the rates because the rate design is based on service amounts and not necessarily one-half of the provisional rates.

Comments: Western cannot rightfully charge its direct connected service customers for losses incurred making deliveries over the PG&E transmission system to other customers.

Response: Transmission of CVP power by PG&E is an integral part of the CVP system. Direct service customers have chosen to directly connect to the CVP transmission facilities. By directly connecting to the CVP system, these customers avoid paying the PG&E transmission service rates. The charges for PG&E transmission are passed on to the specific users of this service. An additional benefit to the direct-service customers is that these same customers have a choice of using either the CVP or PG&E wheeling services for third-party power transactions. Western has evaluated the potential impact to the direct service customers and has determined that it is inappropriate to give these customers a discount or rate reduction for PG&E transmission losses. Contract 2948A requires that the CVP provide 4.5-percent losses to PG&E for its deliveries to CVP customers at 44 kV and above and 8-percent losses for deliveries below 44 kV. These losses are netted into the PG&E/Western monthly accounting of resources. The losses may be provided by CVP generation, PG&E, or from other purchases made by Western. Those customers receiving deliveries below 44 kV are charged for 3.5-percent losses by Western at the CVP commercial firm-power rates. This assures that only the costs associated with the higher voltage deliveries are included in the power rates charged to all customers. If Western were to give direct-service customers a credit for losses by third parties, Western would have to adjust that credit by losses Western incurred for delivery to the direct-service customers over Western's system. Western is currently charging 3.7-percent losses to third parties. In addition, Western would have to charge the direct-service customers for O&M costs for facilities associated with the direct service. These costs are now being included in the commercial firm-power rates. The costs associated with CVP losses are difficult to determine and vary with the mix of resources which Western uses. Allocation of O&M expenses would require a breakdown of costs based on the facilities or equipment used solely for direct-service deliveries, which would be difficult to determine. Western's approach provides equality for all CVP customers regardless if the ultimate power deliveries are over PG&E or Western facilities. Western has unbundled the appropriate costs associated with PG&E deliveries from the CVP commercial firm-power rates.

Comments: Western should withdraw the rate adjustment proposal. The current proposal is not supportable. PRS guidelines (DOE Order RA 6120.2) are not causing a need for a rate adjustment. The PRS shows that unamortized investment does not equal allowable unamortized investment until FY 2004. The CVP is more than $200 million ahead of the repayment requirements. No current PRS was provided that showed a need to develop a plan as provided for in DOE Order RA 6120.2.

Response: A rate adjustment is required under FERC criteria because the rate approval on the existing rates terminates April 30, 1993. The revised rates are supportable. Western followed DOE Order RA 6120.2 to develop its provisional rates. As the commenter points out, the CVP is ahead of its required repayment in accordance with

DOE Order RA 6120.2, but the CVP did not make an investment payment from the mid 1970's until FY 1991. In fact, the CVP has been carrying a deficit in its repayment of annual expenses for several years. The current PRS indicates that the CVP has recovered all deficits and is now making payments toward repayment of investment. A revised PRS was provided in the customer brochure that demonstrated the revised rates were needed to recover future projected expenses. A PRS using the existing rates was available to all parties upon request.

Comments: Delay rate process, combine rate and RAC, and work with customers "showing an interest" to develop a supportable rate, or at least an understanding of assumptions and methodologies used. Make rates effective October 1, 1993.

Response: Delaying the rate process is inappropriate. Western held two informal meetings, a public information forum, and a public comment forum in order to explain its rates and discuss issues. Prior to the formal process, Western invited all customers to meet with its staff in order to obtain a better understanding of the CVP rate methodologies. Although the rates are effective May 1, 1993, the rates do not change until October 1, 1993.

Comments: Establish a forum for the customer's input into budget process.

Response: In a separate response, Western indicated that it will annually report to the customers or hold a customer meeting on the status of CVP repayment. This will include budget information.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Sacramento Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 1825 Bell Street, Suite 105, Sacramento, CA 95825; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective May 1, 1993, Rate Schedules CV–F7, CV–PC1, CV–FT2, CV–NFT2, and CV–TPT3. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval or substitute rates on a final basis, through April 30, 1998.

Issued in Washington, DC, April 12, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule CV–F7 (Supersedes Schedule CV–F6)

Central Valley Project

Schedule of Rates for Commercial Firm-Power Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To the commercial firm-power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

MONTHLY RATES

Period	Capacity	Energy
05/01/93–09/30/93	$6.45/kW/month	Base: 16.30 mills/kWh. Tier: None.
10/01/93–04/30/94	$6.22/kW/month	Base: 17.97 mills/kWh. Tier: None.
05/01/94–09/30/95	$6.22/kW/month	Base: 16.99 mills/kWh . Tier: 30.87 mills/kWh.
10/01/95–09/30/97	$6.57/kW/month	Base: 17.73 mills/kWh. Tier: 34.70 mills/kWh.
10/01/97–04/30/98	$7.16/kW/month	Base: 19.33 mills/kWh. Tier: 37.46 mills/kWh.

Billing: Demand: The rates listed above for capacity shall be the charge per kW of billing demand. The billing demand is the highest 30-minute integrated demand measured or scheduled during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy: The rates listed above for energy shall be a charge per kWh for all energy use up to, but not in excess of, the maximum kWh obligation of the United States during the month as established under the power sales contract.

The energy base rate shall be applied to all energy sales below a 70-percent monthly load factor. The energy tier rate shall be applied to all energy sales at a 70-percent and higher monthly load factor. The monthly load factor shall be calculated based on the lesser of the customer's (1) maximum demand for the month or, if a scheduled customer, the maximum scheduled demand for the month; or (2) the CRD. Only power offered under this Rate Schedule CV–F7 will be used in the calculation of the load factor.

Adjustments: Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of

the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above. The energy base rate will be used as the overrun rate for energy.

For Revenue Adjustment: The Revenue Adjustment Clause (RAC) calculation specified in Rate Schedule CV-F6 will terminate effective March 31, 1993. All credits or surcharges allocated based on the final 6-month RAC calculation period of October 1, 1992, through March 31, 1993, will be allocated to the CVP commercial firm-power customers during a 5-month period beginning on May 1, 1993, and ending on September 30, 1993. No RAC will be applied under this Rate Schedule CV-F7 for the remainder of FY 1993. The following RAC methodology will be effective October 1, 1993:

1. If the actual net revenue is greater than the projected net revenue for the RAC calculation period, a revenue credit will be allocated during the RAC adjustment period. The credit will equal the difference between the actual net revenue and projected net revenue, represented by the following formula:

ANR > PNR; C = ANR–PNR
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
C=Credit

2. If actual net revenue is less than the projected net revenue for the RAC calculation period, a revenue surcharge will be allocated during the RAC adjustment period.

2.1 If the actual net revenue is negative, the surcharge will be equal to the minimum investment payment plus the annual deficit, represented by the following formula:

ANR < PNR and < O; S = MIP + AD
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
AD=Annual Deficit
S=Surcharge

2.2 If the actual net revenue is positive, the surcharge will equal the minimum investment payment less the actual net revenue, represented by the following formula:

ANR < PNR and > O; S = MIP–ANR (if ANR > MIP, S = O)
Where:
ANR=Actual Net Revenue
PNR=Projected Net Revenue
MIP=Minimum Investment Payment
S=Surcharge

Provided, that if the actual net revenue is greater than the minimum investment payment, the surcharge will be equal to zero.

3. The RAC credit or surcharge allocation shall not exceed $20,000,000 each RAC adjustment period.

4. The RAC credit or surcharge shall be allocated to each CVP commercial firm-power customer based on the proportion of the customer's billed obligation to Western for CVP commercial firm capacity and energy to the total billed obligation for all CVP commercial firm-power customers for CVP commercial firm capacity and energy for the RAC calculation period.

5. For purposes of the RAC calculation, the following terms are defined:

5.1 Actual Net Revenue—The Recorded Net Revenue.

5.2 Annual Deficit—The amount the recorded annual expenses, including interest, exceed recorded annual revenues.

5.3 Minimum Investment Payment—The lesser of 1 percent of the recorded unpaid investment balance at the end of the prior FY that the RAC is being calculated, or the projected net revenue.

5.4 Projected Net Revenue—The annual net revenue available for investment repayment projected in the PRS for the rate case during the FY that the RAC is being calculated (see table I).

5.5 RAC Adjustment Period—The period January 1 through September 30, following the RAC calculation period when credits or surcharges will be applied to the power bills. The first RAC adjustment period under this rate schedule will be in FY 1995, beginning January 1, 1995, and ending September 30, 1995.

5.6 RAC Calculation Period—The last recorded FY (October 1 through September 30). The first RAC calculation period under this rate schedule will be FY 1994, beginning October 1, 1993, and ending September 30, 1994.

5.7 Recorded Net Revenue—The annual net revenue available for repayment recorded in the PRS for the FY that the RAC is being calculated.

6. Subject to modification by a superseding rate schedule, the final RAC will be allocated to the customers during the period January 1, 1999, to September 30, 1999.

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE

Period	Projected net revenue
October 1, 1993–September 30, 1994	$1,581,503
October 1, 1994–September 30, 1995	7,032,754

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE—Continued

Period	Projected net revenue
October 1, 1995–September 30, 1996	14,430,107
October 1, 1996–September 30, 1997	1,051,664
October 1, 1997–September 30, 1998	9,595,452

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading. The low power factor charge (LPFC) will be calculated by multiplying the customer's maximum monthly demand by the kVar/kW rate for the customer's mean power factor as provided in the following table 2:

A LPFC will be assessed when a customer's power factor is less than 95 percent.

(a) A charge of $2.50 per kVar will be assessed for every kVar required to raise a customer's power factor to 95 percent. The calculated power factor used to determine if a charge will be assessed is the arithmetic mean of a customer's measured monthly average power factor and their measured onpeak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent.

(b) The mean power factor will be calculated at each customer's point of delivery. If a customer has multiple points of delivery, the power factor will be determined from totalized information from the points of delivery.

(c) No credit will be given for customers operating between 95 percent and 100 percent.

(d) Customers that have a monthly peak demand of less than or equal to 50 kW will not be subject to the LPFC.

(e) The Contracting Officer may waive the LPFC for good cause in whole or in part.

TABLE 2.—KVAR/KW RATE TABLE

Power factor	Rate
0.94	$0.09
0.93	0.17
0.92	0.24
0.91	0.32
0.90	0.39

TABLE 2.—KVAR/KW RATE TABLE CONTINUED

Power factor	Rate
0.89	0.46
0.88	0.53
0.87	0.60
0.86	0.66
0.85	0.73
0.84	0.79
0.83	0.86
0.82	0.92
0.81	0.99
0.80	1.05
0.79	1.12
0.78	1.18
0.77	1.25
0.76	1.32
0.75 & below	1.38

Rate Schedule CV–PC1

Central Valley Project

Schedule of Rate for Peaking Capacity Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To customers for long-term firm peaking capacity service supplied through one meter, at one point of delivery, unless otherwise provided in the service contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Billing: The rates listed below for peaking capacity shall be the charge per kW applied to the maximum rate of delivery specified in the service contract, payable whether utilized or not.

Peaking Capacity Charge:

Effective 05/01/93–09/30/93.	Rate: $6.45/kW/month.
Effective 10/01/93–09/30/95.	Rate: $6.22/kW/month.
Effective 10/01/95–09/30/97.	Rate: $6.57/kW/month.
Effective 10/01/97–04/30/98.	Rate: $7.16/kW/month.

Energy: Billing: The rates listed below for energy shall be the charge per kWh for all energy scheduled for delivery without return.

Energy Charge:

Effective 05/01/93–09/30/93.	Rate: $16.30 kWh.	mills/
Effective 10/01/93–04/30/94.	Rate: $17.97 kWh.	mills/
Effective 05/01/94–09/30/95.	Rate: $16.99 kWh.	mills/
Effective 10/01/95–09/30/97.	Rate: $17.73 kWh.	mills/
Effective 10/01/97–04/30/98.	Rate: $19.33 kWh.	mills/

Adjustments: Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above.

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Rate Schedule CV–FT2 (Supersedes Schedule CV–FT1)

Central Valley Project

Schedule of Rate For Firm Transmission Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To firm transmission service customers where power and energy are received into the CVP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CVP system specified in the transmission service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Billing: The rate listed below shall be applied to the maximum rate of delivery specified in the service contract, payable whether utilized or not.

Transmission Service Charge: $0.43/kW/month.

Adjustments: For Reactive Power: None. There shall be no entitlement to the transfer of reactive kVars at delivery points, except when such transfers may be mutually agreed upon by the Contractor and Contracting Officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Rate Schedule CV–NFT2 (Supersedes Schedule CV–NFT1)

Central Valley Project

Schedule of Rate for Nonfirm Transmission Service

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To nonfirm transmission service customers where power and energy are received into the CVP system at points of receipt with other systems and transmitted and delivered, subject to the availability of transmission capacity, less losses, to points of delivery from the CVP system specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for capacity, three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Billing: The rate listed below shall be applied to each kWh delivered at the point of delivery, as specified in the service contract.

Transmission Service Charge: 1.23 mills per kWh.

Adjustments: For Reactive Power: None. There shall be no entitlement to the transfer of reactive kVars at delivery points, except when such transfers may be mutually agreed upon by the Contractor and Contracting Officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Rate Schedule CV–TPT3 (Supersedes Schedule CV–TPT2)

Central Valley Project

Schedule of Rate for transmission of CVP Power by a Third Party

Effective: May 1, 1993.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To customers of the CVP who require transmission service by a third party to receive power and energy sold by Western.

Character and Conditions of Service: Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: When the United States utilizes transmission facilities, other than its own, in providing service under a customer's power sales contract, and costs are incurred by the United States for the use of such facilities, the customer shall pay all costs, including transmission losses, incurred in the delivery of such power.

The transmission losses chargeable to the customer shall be those losses which are in excess of the "at or above 44-kV" transmission losses specified by Contract No. 14–06–200–2948A. For billing purposes, transmission losses will be added to the meter readings of the power and energy delivered to the

customer under the customer's power sales contract with the United States.

[FR Doc. 93–15596 Filed 7–1–93; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4674–7]

Fuels and Fuel Additives; Waiver Application/Circuit Court Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 12, 1991, the Ethyl Corporation (Ethyl) submitted an application for a waiver of the prohibition against the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). The application sought a waiver for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). On January 8, 1992, the Administrator of EPA denied Ethyl's application for a waiver (57 FR 2535, January 22, 1992). On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision. Ultimately the court case was not settled and on April 6, 1993, in light of these new data, the United States Court of Appeals remanded the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's section 211(f)(4) application. Since the mandate of the court was transmitted to the Agency on June 3, 1993, the Administrator of EPA has until November 30, 1993 to grant or deny this application.

DATES: Since the date of the remand by the United States Court of Appeals, Ethyl has submitted additional data to EPA, and has committed to submit other additional data no later than July 15, 1993. Comments on this application will be accepted until August 6, 1993.

EPA has not scheduled a public hearing on this Notice. A hearing will be held in Washington, DC, on this waiver application if one is requested on or before July 19, 1993.

Parties who wish to request a hearing should contact Joseph R. Sopata at (202) 233–9034. If a hearing is scheduled based on a request and you wish to be notified or to participate, you must contact the above individual for the date, time and location of the hearing. If there is a hearing, parties wishing to testify should contact Joseph R. Sopata. It is also requested that six copies of prepared hearing testimony be available at the time of the hearing for distribution to the hearing panel. Hearing testimony should also be submitted to the EPA Air Docket in Washington, DC. Additional information on the submission of comments to the docket may be found below in the "ADDRESSES" section of this notice.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A–93–26 at the Air Docket (LE–131) of the EPA, Room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9034.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 56 FR 5352 (February 11, 1991). Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which apply only to light-duty vehicles. Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application the statute provides that the waiver shall be treated as granted. The subject of this notice is an application by Ethyl under section 211(f)(4) of the Act for a waiver for the fuel additive methylcyclopentadienyl manganese tricarbonyl (MMT), commercially labeled by Ethyl as HiTEC 3000, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn).

This Agency action is a reconsideration of Ethyl's fourth application for a waiver for MMT. Ethyl's first application was submitted on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. The Administrator denied these requests for waivers. The decisions and justifications thereof may be found in the September 18, 1978 **Federal Register**, 43 FR 41424, and the December 1, 1981 **Federal Register**, 46 FR 58630. Ethyl's third application, was submitted on May 9, 1990, for concentrations of MMT resulting in a level of 0.03125 (1/32) gpg Mn in unleaded gasoline (the same levels which are requested in the application which is the subject of today's notice). Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time that Ethyl withdrew that application, EPA accepted the

withdrawal and immediately terminated the proceeding without action on the application.

On January 8, 1992, the Administrator of EPA denied Ethyl's fourth application for a waiver (57 FR 2535, January 22, 1992). The application was denied based in part upon data submitted by Ford Motor Company which indicated that, for the model groups tested by Ford and, for the conditions under which Ford tested its vehicles, the increases in hydrocarbon exhaust emissions as a result of the use of MMT were substantially greater than those observed in the Ethyl test program. In its decision, the Agency stated that a likely factor which might account for the differences observed between the Ethyl and Ford test programs was the severity of the driving cycle. However, the Agency also concluded that other factors might be responsible for the observed differences.

In the denial decision, the Agency stated that it had always accepted data from test programs which "model" the fleet in support of waiver applications, but that if an interested party were to present data indicating that a potentially significant subset of the fleet, not tested by the applicant, was especially susceptible to the negative effects of the additive, the Agency could reasonably require specific testing on representative models of that sub-fleet.

In its decision, the Agency also stated that it believes it is reasonable to take into account the effect of a fuel on vehicles' ability to meet future emissions standards. (The "Tier I" tailpipe standards prescribed by section 202(g) of the Act begin to take effect in model year 1994, which begins approximately in September 1993.[1]) Therefore, regarding the Ford data mentioned above, the Agency stated in its decision that the concerns raised by those data related to both current and future standards.

On February 13, 1992, Ethyl filed a petition for review of the January 8, 1992 waiver denial decision in the United States Court of Appeals for the District of Columbia Circuit. EPA and Ethyl subsequently entered into discussions concerning a possible settlement of the court case. In the context of those discussions, Ethyl submitted to the Agency new emissions test data developed by Ethyl since the denial decision.

In its new test program, Ethyl tested six pairs of 1991 Escorts, using both the relatively high-speed driving pattern similar to that utilized by Ford in its testing of 1991 Escorts (the Ford cycle) and, also, after changing emissions system components (catalyst and oxygen sensor), the driving cycle used by Ethyl in the original test program (EPA's durability certification cycle also known as the AMA). Half of the vehicles utilized MMT-containing fuel and half were run on clear fuel (fuel not containing MMT). Ethyl also performed some catalyst efficiency tests on these vehicles utilizing a "slave engine".[2]

Ethyl also tested six 1988 Escorts which were used in its original test program driven on the AMA cycle. In the new program, after replacing the catalyst and oxygen sensor, Ethyl continued mileage accumulation, from 75,000 to 100,000 miles, utilizing the Ford cycle. Likewise, Ethyl tested six 1988 Buicks from its original fleet accumulating mileage (100,000 to 115,000 miles) using the Ford cycle but without replacing any components.

Finally, in this test program, Ethyl accumulated mileage on seven pairs of 1992 vehicles (four Crown Victorias, six Buick Regals and four Ford Mustangs) over 20,000 to 45,000 miles, with and without MMT, using the Ford cycle.

Based on its inspection and analysis of the new Ethyl data, EPA tentatively concluded that the data indicate that driving cycle does not contribute significantly to MMT-induced increases in hydrocarbon emissions. (EPA's preliminary analysis was placed in docket A–92–41.) However, in addition to addressing the issue of driving cycle, the Ethyl data appeared to confirm the finding by Ford that 1991 Escorts experienced a much higher MMT-induced HC increase than that observed in other models tested (either in Ethyl's new program or in the original Ethyl test program). The Agency remained concerned that these data could indicate that certain engine and emissions control system configurations are more vulnerable to an MMT-induced emissions increase irrespective of driving cycle.

To facilitate further settlement discussions with Ethyl, EPA decided to attempt to formulate an emission testing program intended to address in a timely manner specific unresolved issues concerning the effect of MMT on emissions. EPA held a public workshop to assist the Agency in attempting to formulate a proposed emission test program to address these issues (57 FR 44740, September 29, 1992). In particular, EPA hoped to obtain information and assistance from technical experts outside of the Agency. Moreover, in view of the significance of any future waiver decision concerning MMT for the auto industry and the general public, EPA was interested in obtaining comments concerning a specific emission testing program and decisional framework designed to address and resolve these issues. The workshop was conducted on October 28, 1992.

Although further settlement discussions between Ethyl and EPA were held subsequent to the public workshop, the parties were not successful in reaching a settlement. However, despite the failure of the parties to reach agreement, EPA concluded that the Administrator's denial decision should be reconsidered in light of the new emissions data generated by Ethyl subsequent to the decision. Accordingly, EPA requested that the United States Court of Appeals for the District of Columbia remand the denial decision to enable EPA to reconsider its decision concerning Ethyl's application.

On April 6, 1993, the Court of Appeals issued a decision granting the Agency's motion and remanding the case to the Agency to redetermine within 180 days whether to grant or deny Ethyl's application. The mandate implementing this judgement was transmitted to the Agency on June 3, 1993, thereby beginning the 180-day period allotted for the Agency's reconsideration. Thus, the Administrator's final decision on remand is due on or before November 30, 1993.

Ethyl has conducted and submitted to EPA additional data on emissions testing with fuels containing MMT on five 1993 models and on three previously tested 1992 models. Ethyl used an intermediate 45 mile per hour average driving cycle for mileage accumulation on the 1993 test vehicles and for some of the mileage accumulation on the 1992 vehicles (the initial mileage accumulation on the 1992 vehicles was generated using a 55 mile per hour average driving cycle, i.e., the Ford cycle).

Ethyl has presently submitted additional data for five 1993 models (Toyota Camrys, Oldsmobile Achievas, Dodge Shadows, TLEV Honda Civics, TLEV Ford Escorts) reflecting 45,000 to 50,000 test miles of operation after an initial 5000 mile stabilization period. Test mileage accumulation for the 1992 vehicles which were tested varied. For example, the 1992 Ford Crown Victoria accumulated 100,000 test miles. By contrast, the 1992 Ford Mustang accumulated 45,000 test miles, while

[1] 56 FR 25724–25790 (June 5, 1991).

[2] A "slave engine" is a stand alone engine which is used to produce consistent emissions which can be tested in catalysts. The purpose is to reduce the inconsistencies in emissions coming out of the engine so specific catalyst effects can be isolated.

the 1992 Buick Regal accumulated 65,000 test miles. Data concerning testing completed on these vehicles were submitted by Ethyl on May 25, 1993, May 28, 1993 and June 1, 1993. A copy of Ethyl's data submission and Ethyl's accompanying analysis have been placed in the docket. Ethyl has agreed that it will submit any additional data representing higher mileage testing of the 1993 vehicles to the Agency no later than July 15, 1993.

EPA invites comments on whether the Administrator should grant or deny this waiver application. All comments must be submitted by August 6, 1993.

Dated: June 28, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-15685 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-140211; FRL-4629-9]

Access to Confidential Business Information by ICF, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF, Incorporated (ICF), of Fairfax, Virginia and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D3-0021, contractor ICF, Inc., of 9300 Lee Highway, Fairfax, VA, and 1850 K Street, NW, Washington, DC will assist the Office of Pollution Prevention and Toxics (OPPT) in the development and implementation of national regulations for the protection of stratospheric ozone, including the development of the Significant New Alternatives Policy (SNAP) program under section 612 of the Clean Air Act.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D3-0021, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at ICF's Fairfax, VA and Washington, DC sites.

ICF will be authorized access to TSCA CBI at its facilities under EPA's *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at ICF's sites, EPA will approve ICF's security certification statement, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 21, 1993.

George A. Bonina,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-15578 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4622-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 14, 1993 Through June 18, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 19392).

Draft EISs

ERP No. D-AFS-L65146-OR Rating EC2, Spirit Fire Recovery Project, Timber Harvest and Road Construction, High Spirit Fire Area, Willamette National Forest, Oakridge Ranger District, Lane County, OR.

Summary: EPA had environmental concerns based on the potential for adverse effects on air quality and spotted owls. Additional information and clarification was needed to: identify potential effects on air quality; disclose the information contained in the Biological Evaluation dealing with the effects of the proposal on spotted owls; disclose the noise impacts associated with helicopter logging; present the effectiveness of the proposed mitigation measures; and describe a detailed monitoring plan.

ERP No. D-AFS-L65188-00 Rating LO, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA.

Summary: EPA had no objections to the proposed project although it suggested the Final EIS and Record of Decision make a strong commitment to monitoring yew populations and potential effects since the draft EIS indicates that inventory estimates of yew populations are based on only 1991 and 1992 sampling efforts.

ERP No. D-FHW-K40199-AZ Rating EC2, Price Freeway (Loop 101) Corridor, Construction Price Road between the Superstition Freeway to Pecos Road, Funding and Right-of-Way Acquisition, Maricopa County, AZ.

Summary: EPA expressed environmental concerns because of potential impacts to air quality and conformity requirements of the Clean Air Act. EPA requested additional information on the transportation systems management alternative and air quality.

ERP No. D-NOA-E91008-00 Rating EC2, Red Snapper Reeffish Fishery Management Plan and Amendment 5, Implementation, Approval of several Permits and Special Management Zones, (SMZ), Gulf of Mexico, FL, AL, MS, LA and TX.

Summary: EPA raised environmental concerns regarding secondary economic impacts of fishing regulations on industries and individuals associated with fishing. EPA supported technical aspects of the fishery management plan.

Final EISs

ERP No. F-COE-K39035-HI, Ewa Beach Marina Protection Project, Construction and Development, US Department of Army Permit Application and US Coast Guard Bridge Permit, Ewa

Beach, Island of Oahu, Honolulu County, HI.

Summary: EPA requested that the EIS Record of Decision include appropriate commitments to protect water quality and associated natural resources such as bottom and reef communities. EPA urged the US Army Corps of Engineers to ensure adequate planning efforts for watershed management, regional development and traffic mitigation measures.

Dated: June 29, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-15728 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4622-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed June 21, 1993 Through June 25, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930206, Final EIS, GSA, IL, Hammond Federal Building and U.S. Courthouse Construction and Site Selection, Implementation, Lake County, IL, Due: August 02, 1993, Contact: Barbara Reed (312) 353-5610.

EIS No. 930207, Final EIS, AFS, ID, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID, Due: August 02, 1993, Contact: Sally Campbell (503) 326-7755.

EIS No. 930208, Draft EIS, AFS, CO, Mountain Plover (Charadruis Montanus) Management Strategy, Implementation, Pawnee National Grassland, Arapaho and Roosevelt National Forests, Weld County, CO, Due: September 11, 1993, Contact: Jeffrey M. Losche (303) 353-5004.

EIS No. 930209, Draft EIS, FRC, AR, River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455, Construction, Operation and Maintenance, License, Logan County, AR, Due: August 16, 1993, Contact: James Haimes (202) 219-2780.

EIS No. 930210, Draft EIS, AFS, ID, Upper Swiftwater Timber Sale and Road Construction, Implementation, Selway Ranger District, Nez Perce National Forest, Idaho County, ID, Due: August 16, 1993, Contact: Cynthia A. Lane (208) 926-4258.

EIS No. 930211, Final EIS, FHW, PA, PA-33 Extension, US 22 Interchange in Bethlehem Township to I-78 Interchange in Lower Saucon Township, Funding and COE Section 404 Permit, Northampton County, PA, Due: August 02, 1993, Contact: Manuel A. Marks (717) 782-4422.

EIS No. 930212, Draft EIS, FHW, WA, WA-520 Corridor Improvements, Construction and Reconstruction between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA-901), Funding and COE Section 404 Permit, Cities of Bellevue and Redmond, King County, WA, Due: August 16, 1993, Contact: Barry F. Morehead (206) 753-2120.

EIS No. 930213, Draft EIS, NPS, AK, Denali (South Slope) National Park and Preserve Development Concept Plan, Implementation, Mantanuska-Susitna Borough, AK, Due: September 17, 1993, Contact: Russell W. Berry, Jr. (907) 683-2294.

EIS No. 930214, Final Supplement, AFS, UT, Tippets Valley Timber Harvest Project, Timber Sale and Road Construction, Implementation, New Information, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: May 14, 1993, Contact: Ronald Wilson (801) 865-3200.

This is official Notice of Availability for the above-EIS. There was a 45 day comment/waiting period ending on 5-14-93. The project will not be Implemented for 30 days following the publication of this notice in the **Federal Register** dated July 2, 1993. For further information contact the above Forest Service Representative.

Dated: June 29, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-15727 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-U

[OPPTS-44599; FRL-4631-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tetrabromobisphenol-A-bis(ethoxylate) (CAS No. 4162-45-2), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for tetrabromobisphenol-A-bis(ethoxylate) were submitted by the Great Lakes Chemical Corporation pursuant to a test rule at 40 CFR 799 Part 766. They were received by EPA on June 1, 1993. The submission describes the analytical protocol for the determination of polybrominated dibenzo-p-dioxins and dibenzofurans by high resolution gas chromatography/medium high-high resolution mass spectrometry.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44599). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 21, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-15577 Filed 7-1-93; 8:45 am]

BILLING CODE 6560-50-F

FARM CREDIT SYSTEM INSURANCE CORPORATION

[BM-27-APR-93-02]

Policy Statement Concerning Financial Assistance to Operating Insured Banks

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) by the Farm Credit System Insurance Corporation Board (Board) adopted a policy statement setting forth the

circumstances under which financial assistance to operating insured institutions will be considered, and the terms and conditions that would likely be imposed in conjunction with the granting of assistance. The proposed statement of policy was published on September 8, 1992, 57 FR 40912. The policy as adopted was published in the **Federal Register** on May 7, 1993 at 58 FR 27285. Explanatory information in response to comments received is published today.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Carl R. Pfitzinger, Asset Assurance Manager, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, Virginia 22102–0826, (703) 883–4385, TDD (703) 883–4455.

SUPPLEMENTARY INFORMATION: On September 8, 1992, FR 57 40912, the Corporation published for comment a policy statement setting forth the circumstances under which financial assistance to operating insured institutions will be considered, and the terms and conditions that would likely be imposed in conjunction with the granting of assistance.

I. General

Under section 5.61 of the Act, the Corporation may, in its sole discretion, provide financial assistance to operating insured banks:[1] (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

In order for the Corporation to provide assistance to any operating insured bank, the Corporation Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural services in the area of operation of the bank.

Given the discretionary nature of the powers contained in section 5.61 and their importance to institutions potentially seeking Federal government assistance the Board has determined that this Statement of Policy should be adopted covering situations involving only open, operating institutions. That is, those institutions seeking financial assistance under section 5.61 to remain operational are covered under this statement of policy; however, in weighing a request for assistance, the Corporation will evaluate alternatives for dealing with troubled institutions seeking assistance, including, where appropriate, assisting other Farm Credit System institutions in merging with or otherwise acquiring the troubled institution.

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

II. Discussion of Comments

The Corporation received comments jointly from The Farm Credit Council (FCC), on behalf of its membership, and the Farm Credit Banks Funding Corporation, and from one Farm Credit Bank. The Farm Credit Bank's comments consisted of statements in support of the FCC's comments. A discussion of their comments by criterion follows.

Criterion 1—Least Cost Analysis

Criterion 11—Potential Financial Effect of Assistance

Because the FCC combined some of its comments on these two criteria, they will be discussed together.

The FCC expressed its understanding that "cost to the Corporation" contained in criterion 1 was limited to the "cost to the Insurance Fund" of the open institution assistance; "cost" did not include other costs such as increased funding costs to the System, which it believed were addressed in criterion 11. It also believed that the purported linkage between Criteria 1 and 11 needed to be spelled out more clearly in the final Statement of Policy. The FCC further noted that, in its view, criterion 1 was more restrictive than the limitation contained in section 5.61(a)(3)(A) of the Act. It requested that the Corporation give recognition to this in the final Statement of Policy. In addition, the FCC expressed concern over the use of the term "clearly" in criterion 1 and urged the Corporation to adopt a more easily applied standard. The FCC sought further clarification regarding the precise meaning of criterion 11, namely, if the primary concern in criterion 11 is the potential adverse effect that open institution assistance might have on other System institutions, it believed that this should be made explicit. In addition, the FCC believed that "uninsured creditors" are not an appropriate concern of the Corporation, and the term should be deleted from criterion 11.

The FCC is correct in its understanding that "costs" considered in evaluating open institution assistance are limited to "cost to the Corporation." The only relevant costs are those to be incurred by the Corporation, either through open institution assistance or liquidation. The Corporation disagrees that criterion 1 is limited and imposes a stricter standard than that in the statute. Criterion 1 merely affirms that the "cost test" contained in the statute will be applied.

The purpose of criterion 11 is to indicate that, beyond the cost test referenced in criterion 1, the Corporation will evaluate the effect of granting or not granting open institution assistance to the parties listed. In doing so, the Corporation is being prudent in assessing the potential for incurring or avoiding additional "costs to the Corporation" resulting from its decision relative to the request for assistance. The Corporation believes it would be unwise not to assess the potential effects of its decision upon the stockholders, uninsured creditors, and the financial markets. The Corporation would point out that in the case of an assistance request involving an association, in the view of the Corporation, the lending bank is an uninsured creditor. It is the Corporation's position that the only insured creditors are the bondholders.

Criterion 2—Alternative Sources of Assistance Must Be Exhausted

The FCC expressed concern over what is characterized as the all-encompassing language of this criterion. While recognizing that the Corporation desires potential candidates for assistance to attempt to resolve their problems and explore other methods of self-help, the FCC believes that the word "exhausted" is too absolute and unyielding. It suggested that words such as "explored" or "considered" might better convey the Corporation's intent.

The Corporation believes that open assistance should only be utilized after a troubled institution has taken every reasonable step to resolve its financial problems on its own, including considering and/or utilizing merger or any other System self-help mechanism available to it. The Corporation believes that its funds should not be utilized until all reasonable private-sector solutions have been attempted. However, to clarify the Corporation's position in this regard, the word "exhausted" has been deleted and "explored in good faith" substituted.

The FCC also requested specific comment as to whether associations

would be expected to provide assistance to their Farm Credit Bank before the Corporation would consider a request from that bank for "open assistance" as well as the extent that associations might be expected to receive assistance from their bank or other associations in the district. Presumably, associations, as owners of a cooperative enterprise, would have an interest in the viability of their institution. However, the Corporation is not in a position to state at this time what its expectations might be in this regard in a particular circumstance. We intend to maintain as much flexibility as possible, and to evaluate individual requests for assistance on a case-by-case basis depending upon the circumstances present at the time.

Criterion 3—Viability

The FCC urged the Corporation to spell out in the final Statement of Policy the kind of factors, both qualitative and quantitative, it will consider in determining whether assistance will restore viability. It also sought confirmation of its understanding that it is largely up to the institution requesting assistance to convince the Corporation of the reasonableness of the business plan and that the proposal for assistance will lead to the viability of the institution.

The Corporation appreciates the FCC's desire for more specificity with respect to the implementation of this policy; however, it is inappropriate to set out specific standards in the policy statement. In granting assistance, it is the Corporation's objective that the amount and form of assistance extended will reasonably assure the viability of the recipient. That is, once the assistance is granted, the institution must, at a minimum, be in conformance with existing regulatory standards, as determined by its regulator, and the institution's financial health for the immediate future must be reasonably assured, as determined by the Corporation. Each such instance must be judged on a case-by-case basis. The FCC is correct in assuming that it is largely up to the applicant to convince the Corporation of the reasonableness of the business plan and any assumptions made in deriving projections; however, the Corporation will make its own determination of viability based on the business plan, the reasonableness of assumptions, and any other circumstance existing at the time.

The FCC requested confirmation that the reference to "adequate level of capitalization" related directly to the Farm Credit Administration (FCA) capital regulations. In addition, to the extent that the Corporation defined "adequate capital" differently than FCA, the FCC urged the Corporation to spell out the kinds of factors it will look to in determining "adequate level of capitalization."

The Corporation is mindful of FCA's statutory duty in setting capital standards which it has done through regulations. However, the FCA capital regulations establish only minimum capital requirements with which insured banks must comply. Again, the Corporation will make a determination on a case-by-case basis as to the prospects for "an adequate level of capitalization within a reasonable period of time" based on the circumstances present at the time. The Corporation has no statutory or regulatory role in the setting of either capital or accounting standards for System institutions, and will make its independent business judgment relative to adequate capital based on the amount and components of the equity accounts of the applicant in relation to asset quality, management strength, earnings, liquidity, and any other factors the Corporation deems relevant.

Criterion 4—Repayment of Assistance

The FCC expressed general support of the proposition that open bank assistance should be repaid; however, it expressed concern as to how repayment requirements would be characterized in any assistance package as said requirements could impact the counting of assistance as capital under either generally accepted accounting principles or for regulatory capital purposes.

The Corporation appreciates the concern expressed and is mindful of the issue; however, the statute provides for numerous methods of assisting troubled institutions and the Corporation believes it has the capacity to address this issue should the need arise.

Criterion 5—Approval of Business Plans

The FCC expressed support for proposals providing for adequate managerial resources and Corporation approval of business plans, and the need for the Corporation to be able to satisfy itself that the qualifications of the continuing board and management were adequate. It also expressed its view that criterion 5 did not contemplate requiring the continuing board and management to submit undated letters of resignation as was prohibited under section 6.6(c) of the Act, which relates to the Farm Credit System Assistance Board. Section 6.6(c) does not apply to the Corporation.

The FCC is correct in its view that criterion 5 does not contemplate the submission of undated letters of resignation in conjunction with open bank assistance proposals. However, the Corporation reserves the option of determining the continued service of the principals specified in the policy statement.

Criterion 6—Acquisition and Servicing of Troubled Debt

The FCC supported the substance of this criterion.

Criterion 7—Contingent Fee Arrangements

While supporting the concept that fee arrangements in conjunction with requests for open bank assistance should be reasonable and disclosed to the Corporation, the FCC expressed concern regarding the seeming absoluteness of the final sentence of this criterion, and suggested that the Corporation prohibit fees based upon a percentage of the assistance received rather than simply prohibiting all contingent fees.

It is the Corporation's position that requests for assistance can generally be prepared by in-house personnel and that outside parties would generally not be needed incident to a request for assistance. Furthermore, the Corporation believes that fees, to the extent that they are incurred by troubled institutions in conjunction with a request for assistance, are ultimately paid by the Corporation out of any assistance granted. It is therefore the Corporation's objective that a minimum of fees be incurred in conjunction with a request for assistance. It is not the intent of the Corporation to prohibit or otherwise inhibit reasonable expenditures in conjunction with the implementation of an assistance package or the rehabilitation of a troubled institution.

After consideration of the comments, the Corporation believes this criterion otherwise provides sufficient control by the Corporation to justify the elimination of the final sentence of criterion 7.

Criterion 8—Competitive Bidding; Qualified Acquiror

The FCC urged the Corporation to clarify in the final Statement of Policy that the term "qualified acquiror" in both criterion 8 and 9 is intended to mean potential merger partner.

The Corporation believes that the wording in the proposed Statement of Policy is adequate and further clarification is not needed. Section 5.61(a)(2)(A) deals with the

Corporation's authority to provide financial assistance to a potential "acquiror" of a troubled farm credit institution. The Corporation retains the right, in consultation with FCA, to determine that an institution is statutorily qualified to acquire a troubled institution with Corporation assistance, and is otherwise qualified from a managerial and financial standpoint to acquire the troubled institution. In considering any request for open institution assistance, the Corporation reserves the option to compare the cost of open institution assistance with other assistance alternatives under Section 5.61(a)(2)(A) or liquidation.

Criterion 9—Unrestricted Access

The FCC expressed its understanding that the term "acquiror" is limited to another Farm Credit System institution, that unrestricted access would not be required until the point where the Corporation was actually exploring the merger alternative, and that any potential acquiror would be required to execute a confidentiality agreement as a condition precedent to being granted such access.

The Corporation does not have statutory authority to provide assistance for mergers with other than System institutions under the provisions of section 5.61 of the Act and System institutions lack authority to merge with non-System entities. Therefore, for the purposes of this policy, "acquiror" necessarily refers only to other System institutions. While the Corporation reserves the right to deal with requests for open institution assistance within a competitive bidding context, it is not bound to do so. Should the Corporation choose to seek to reduce its cost by soliciting interest from potential acquirors of an applicant for open institution assistance, the potential acquirors must have unrestricted access to the books and records of the applicant. It is expected that at the point the Corporation elects to consider the possibility of an assisted merger or consolidation, the applicant will be required to make its books and records available to the acquiror or withdraw any request for assistance. While the terms of any confidentiality agreement are between the applicant and any qualified acquiror, the confidentiality agreement may not impede the Corporation's efforts to ascertain its potential costs.

Criterion 10—Quantifiable Limits

The FCC expressed the understanding that "quantifiable limits" cited in this criterion relates both to the amount of the assistance and to its relationship to particular assets or liabilities, such as "particular loans included in an assisted pool."

The FCC's understanding is correct. The Corporation expects any applicant to submit a sound and well-structured request detailing both the amount and form of the assistance.

Following is the revised Statement of Policy as adopted by the Board of Directors of the Corporation:

Effective Date: Upon adoption.

Effect on Previous Action: None.

Source of Authority: Section 5.61 of the Farm Credit Act of 1971, as Amended (the Act); 12 U.S.C. 2277a–10.

Whereas, under section 5.61 of the Act, the Farm Credit System Insurance Corporation (Corporation) may provide financial assistance to operating insured banks: /1/ (1) To prevent the placing of the bank in receivership or to assist a bank in danger of being placed in receivership, or (2) when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, to lessen the risk to the Corporation posed by such insured System banks under such threat of instability.

Therefore, the Farm Credit System Insurance Corporation's Board of Directors (Board) adopts the following policy statement:

In order for the Farm Credit System Insurance Corporation (Corporation) to provide assistance to any operating insured bank, the Corporation's Board of Directors must determine that either: (1) The amount of assistance is less than the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank) or (2) the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.

Assistance to operating insured banks may be provided directly to the bank in danger of being placed in receivership, or to another insured bank qualified to merge with or acquire the failing bank.

The Corporation believes that proposals for assistance to operating insured banks under section 5.61 of the Act should be reviewed by the Corporation utilizing the following criteria:

1. The cost to the Corporation must be clearly less than other available alternatives.

2. All alternative sources of assistance must be explored in good faith prior to the Corporation's granting assistance.

3. The proposal must reasonably anticipate the viability of the recipient, including provisions for the attainment of an adequate level of capitalization within a reasonable period of time.

4. The proposal should provide for the eventual repayment of the assistance.

5. The proposal must provide for adequate managerial resources, and the Corporation's approval of business plans. Continued service of any Director or Senior Officer serving the assisted institution in a policy-making role, as determined by the Corporation, will be subject to approval of the Corporation. In addition, compensation arrangements covering Directors and Senior Officers must be approved by the Corporation.

6. The Corporation will consider on a case-by-case basis the nature of the financial assistance requested. Generally, assistance proposals should not anticipate the acquisition and servicing of assets from the assisted institution by the Corporation.

7. Fee arrangements with attorneys, accountants, consultants, and other parties incident to requests for financial assistance must be disclosed to the Corporation. Excessive fees are unnecessary and must be avoided; fee arrangements will be considered in evaluating the cost of the assistance request.

8. The Corporation retains the option of evaluating the assistance proposal within the context of a competitive bidding process and will consider soliciting interest from qualified acquirors.

9. An institution seeking operating institution assistance must consent to unrestricted on-site due diligence review by any potential acquiror that is determined by the Corporation to be qualified after consultation with the Farm Credit Administration.

10. The proposal must contain quantifiable limits on all financial items in the request.

11. The Corporation will evaluate the potential financial effect of the proposal on shareholders, uninsured creditors and the financial markets.

Dated this 27th day of April, 1993.

Dated: June 28, 1993.

By Order of the Board.

Curtis M. Anderson,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 93–15649 Filed 7–1–93; 8:45 am]

BILLING CODE 6710–01–P

[1] As used in section 5.61, the terms "Insured System Bank" and "Bank" include each Production Credit Association and other Associations making direct loans under under the authority provided under section 7.6 of the Farm Credit Act of 1971, as amended.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–993–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 11, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, flooding, and tornadoes on May 6, 1993, through May 19, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David A. Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood and Rock Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–15712 Filed 7–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to be May 6, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–15713 Filed 7–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

CNB Bnacshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire an 84.26 percent interest in House Investments-Deerfield Commons, Limited Partnership, Indianapolis, Indiana, and thereby engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Lafayette, Indiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. ANB Bankcorp, Inc., Bristow, Oklahoma; to engage *de novo* through its subsidiary, American Consulting and Training Services, Inc., Bristow, Oklahoma, in providing management consulting advice to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. Chambanco, Inc., Chambers, Nebraska; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15701 Filed 7–1–93; 8:45 am]

BILLING CODE 6210–01–F

Drummond Banking Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 26, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Drummond Banking Company, Chiefland, Florida; to acquire 100 percent of the voting shares of Suwannee Valley Bancshares, Inc., Chiefland, Florida, and thereby indirectly acquire Bank of Florida, N.A., Chiefland, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The First Trust Holdings, Inc., Watseka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First Trust and Savings Bank, Watseka, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bourbon Bankshares, Inc., Bourbon, Missouri; to acquire 100 percent of the voting shares of Wisdom Holding Corporation, Salem, Missouri, and thereby indirectly acquire Dent County Bank and Trust Company, Salem, Missouri.

2. First Banks, Inc., St. Louis, Missouri; to acquire 19.99 percent of the voting shares of Southside Bancshares Corp., St. Louis, Missouri, and thereby indirectly acquire South Side National Bank in St. Louis, St. Louis, Missouri; Bay-Hermann-Berger Bank, Hermann, Missouri; State Bank of DeSoto, DeSoto, Missouri; Bank of Ste. Genevieve, Ste. Genevieve, Missouri; and The Bank of St. Charles County, St. Charles, Missouri.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FNB, Inc., Greeley, Colorado; to acquire 88.25 percent of the voting shares of Poudre Valley Bank, Fort Collins, Colorado.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Finger Interests Number One, Ltd., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of CBH, Inc., Wilmington, Delaware; and Charter Bancshares, Inc., Houston, Texas, and thereby indirectly acquire University National Bank, Galveston, Texas; Charter National Bank-Colonial, Houston, Texas; and Charter National Bank-Houston, Houston, Texas.

2. First Sonora Bancshares, Inc., Sonora, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Sonora Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire The First National Bank of Sonora, Sonora, Texas.

3. First Sonora Delaware Bancshares, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Sonora, Sonora, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to merge with First National Financial Corporation, Albuquerque, New Mexico, and thereby indirectly acquire First National Bank in Albuquerque, Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15703 Filed 7–1–93; 8:45 am]

BILLING CODE 6210–01–F

Society Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society Equipment Leasing Company, Cleveland, Ohio, in real property leasing activities, including, without limitation, the origination and/or servicing of lease transactions, leasing real property, acting as agent, broker or advisor in leasing such property and in any real property leasing services incidental thereto pursuant to § 225.25(b)(5); and commercial loan transactions

(including, but not limited to, revolving credit and/or term loan credit agreements and the promissory notes associate therewith) relating to the financing of personal or real property pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15704 Filed 6–30–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0450]

Guideline for Quality Assurance in Blood Establishments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft entitled "Guideline for Quality Assurance in Blood Establishments." The guideline is intended to assist manufacturers of blood and blood components in developing quality assurance (QA) programs that are consistent with recognized principles of QA and current good manufacturing practice (CGMP). FDA is requesting written comments on the draft and will review the comments to determine whether further revisions are warranted.

DATES: Written comments by August 31, 1993.

ADDRESSES: Submit written requests for single copies of "Guideline for Quality Assurance in Blood Establishments" to the Congressional and Consumer Affairs Branch (HFM–12), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9000. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9074.

SUPPLEMENTARY INFORMATION:

I. Draft "Guideline for Quality Assurance in Blood Establishments"

The draft, dated June 17,1993, was prepared by the Office of Blood Research and Review (formerly the Office of Biologics Research) and the Office of Compliance, Center for Biologics Evaluation and Research, FDA, and the Office of Regional Affairs, FDA. The draft was developed from the background information document that was provided at an FDA-sponsored public workshop on quality assurance in the manufacture of blood and blood components. The workshop, which was announced in the **Federal Register** of December 13, 1991 (56 FR 65094), was held on January 21 and 22, 1992, in Bethesda, MD. The draft includes discussions of the following: (1) The general concepts of a quality control/assurance program; (2) the responsibilities of the quality control/assurance unit; and (3) the biological product and blood and blood component regulations in 21 CFR parts 600 through 680 and the current good manufacturing practice regulations in 21 CFR parts 210 and 211. Additionally, the draft contains a glossary, a reference page, and an appendix that provides examples of the regulations in 21 CFR parts 210 and 211 and 21 CFR parts 600 through 680 supplementing each other.

II. Request for Comments

FDA is making this draft guideline available for public comment and will consider such comments in determining whether to revise the draft. Because FDA is in the process of revising 21 CFR 10.90(b), FDA is not issuing this document under the authority of 21 CFR 10.90(b), and the document, although called a guideline, does not bind the agency and does not create any rights, privileges, or benefits on or for any person. Manufacturers of blood and blood components may follow the guideline or may choose to use alternative procedures not provided in the guideline. Manufacturers of blood and blood components may wish to discuss the alternative procedures with FDA.

FDA believes that a quality assurance program is an essential part of CGMP for blood establishments. The agency intends to consider rulemaking to codify some or all of the specific principles discussed in the draft guideline.

Interested persons may, on or before August 31, 1993, submit to the Dockets Management Branch (address above) written comments regarding the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Dated: June 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15642 Filed 6–30–93; 8:45 am]

BILLING CODE 4160–01–F

[GN 2094]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part 57 FR 14584, April 21, 1992) is amended to reflect a realignment and consolidation of functions in the Center for Devices and Radiological Health (CDRH), Office of Operations, Food and Drug Administration (FDA). FDA proposes to consolidate its postmarket management activities within CDRH into a new Office of Surveillance and Biometrics. The new Office will consist of statistical, epidemiological, and postmarket surveillance study functions transferred from the Office of Science and Technology and functions pertaining to the review and analysis of adverse device experience reporting transferred from the Office of Compliance and Surveillance (which will be retitled as the Office of Compliance). This Office will also provide extensive support to device evaluation premarket review activities.

Under section HF–B, Organization:

1. Under the Office of Operations (HFA9), Center for Devices and Radiological Health, delete subparagraph *Office of Compliance and Surveillance (HFWC)* in its entirety and insert a new subparagraph *Office of Compliance (HFWC)* reading as follows:

Advises the Center Director and other Agency officials on legal, administrative, and regulatory programs and policies concerning Agency compliance responsibilities relating to medical device and radiological health activities.

Develops, directs, coordinates, evaluates, and monitors compliance programs covering regulated industry.

Conducts field tests and inspections when necessary for regulatory purposes and evaluated industry quality control and testing programs to assure compliance with regulations.

Provides advice to Agency field offices on, and manages Center activities relating to legal actions, case development, and contested case assistance.

Designs, develops, and implements Center programs to register device establishments and list products.

Manages and coordinates Center activities under the Government-wide Quality Assurance and Bioresearch Monitoring Programs.

Coordinates all field planning activities and issues all field assignments for the Center.

Provides technical support and guidance in the development and review of standards and regulations, and the training of Federal and State compliance personnel.

Advises actual or potential manufacturers concerning the requirements of the law and regulations.

2. Delete subparagraph *Office of Science and Technology (HFWE)* in its entirety and insert a new subparagraph *Office of Science and Technology (HFWE)* reading as follows:

Provides scientific support and laboratory analyses in response to the program needs of the Center and other Agency components.

Plans, develops, and implements an intramural science program covering key areas of engineering, physics, and biology; develops, modifies, and validates test methods and measurement techniques, risk assessments and hazard analyses, and generic techniques to enhance product safety and usefulness.

Provides scientific and engineering support in the review of regulatory documents, the development of regulatory decisions, and the analysis of post market surveillance issues.

Plans, conducts, or stimulates research on the human health effects of radiation and medical devices.

Participates in the development of national and international consensus standards and voluntary guidelines through interaction with appropriate national and international standards committees.

Conducts laboratory investigations related to existing and emerging health technologies.

3. Insert a new subparagraph *Office of Surveillance and Biometrics (HFWH)* reading as follows: *Office of Surveillance and Biometrics (HFWH).* Advises the Center Director and other Agency officials on Center programs and policies concerning postmarket management activities for medical devices and radiological products.

Designs, develops, and implements a Center program to acquire device experience information; identifies and analyzes device problems; develops solution strategies to such problems; and tracks programs and solution implementations.

Provides statistical, epidemiological, and biometric services in support of the operating and administrative programs of the Center.

Represents the Center with other government agencies, industry, and consumer organizations on issues concerning postmarket management activities.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: June 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–15717 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–M

Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Three vacancies will occur on the committee on October 31, 1993.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

DATES: No cutoff date is established for receipt of nominations, except that nominations for October 31, 1993, vacancies should be submitted as soon as possible.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the committee. The vacancies that will occur in October 1993, will be in the small animal medicine, pharmacology, and consumer representative areas. However, nominations in all the fields listed below will be accepted at any time.

The function of the committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 23, 1993

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–15719 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92M–0477]

ABIOMED, Inc.; Premarket Approval of ABIOMED® BVS 5000® Bi-Ventricular Support System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by ABIOMED, Inc., Danvers, MA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the ABIOMED® BVS 5000® Bi-Ventricular Support System (BVS). After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 20, 1992, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bette Lemperle, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

SUPPLEMENTARY INFORMATION: On July 17, 1991, ABIOMED, Inc., Danvers, MA 01923, submitted to CDRH an application for premarket approval of the ABIOMED® BVS 5000® BVS. The ABIOMED® BVS 5000® BVS device is a mechanical circulatory support system indicated for use in patients suffering from postcardiotomy ventricular dysfunction. These are patients who have undergone successful cardiac surgery and subsequently develop low cardiac output, impairing hemodynamic stability. The intent of BVS device therapy is to provide circulatory support, restore normal hemodynamics, reduce ventricular work, and allow the heart to recover adequate mechanical function. The BVS device is external to the patient and is intended for short-term use. After undergoing cardiac surgery, the patient is a candidate for mechanical assistance with the BVS device if she/he meets all of the following criteria:

1. Patient has a body surface area > 1.3 m^2 and is ≤ 75 years of age.
2. Patient is in relatively good health other than the cardiovascular problem for which surgery was undertaken.
3. All appropriate measures have been attempted to correct low arterial pH, arterial blood gas abnormalities, electrolytes, hypovolemia, hypervolemia, inadequate cardiac rate, dysrhythmias, and residual hypothermia.
4. Cardiac resuscitation employing pharmacologic agents in a systematic fashion has been attempted. While the use of the intra-aortic balloon pump is recommended prior to BVS assistance, its use may not always be appropriate (e.g., fibrillating heart, peripheral atherosclerosis).
5. Patient is unable to be weaned from cardiopulmonary bypass (CPBP) or is unable to maintain acceptable hemodynamics in the immediate postoperative period (< 6 hours after the first attempt to wean from CPBP).

On November 25, 1991, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On November 20, 1992, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–15718 Filed 7–1–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting; National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 26, 1993. The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The Board will meet July 26, 8:30 a.m. to approximately 4 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue

evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0801.

A summary of the meeting and roster of the members may be obtained by contacting the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045.

Dated: June 29, 1993.

Susan K. Feldman,

NIH Committee Management Office.

[FR Doc. 93–15739 Filed 7–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, on August 5–6, 1993, Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

This meeting will be open to the public on August 5 from 8 a.m. to 8:30 a.m., to review administrative details and other cancer center review issues. Attendance by the pubic will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on August 5 from approximately 8:30 a.m. to recess and on August 6 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide a summary of the meeting and the roster of committee members, upon request.

Dr. David E. Maslow, Scientific Review Administrator, Cancer Center Support Review Committee, National Cancer Institute, Executive Plaza North, Room 643A, National Institutes of Health, Bethesda, Maryland 20892 (301–496–2330) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Maslow, (301) 496–2330 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.197, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15740 Filed 7–1–93; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This Notice provides the final policies and procedures that the Substance Abuse and Mental Health Services Administration (SAMHSA) will use to implement the provisions of section 504 of the Public Health Service Act, as amended by section 104 of the ADAMHA Reorganization Act, Public Law 102–321 (July 10, 1992). These provisions govern the peer and Advisory Council review of applications for grants and cooperative agreements and proposals for contracts for substance abuse and mental health disorders prevention and treatment services.

SUPPLEMENTARY INFORMATION: The public was invited, through a notice published in the **Federal Register** on January 22, 1993 (58 FR 5747–50), to provide written comments on these policies and procedures. No such comments were received. Beyond minor technical changes, the only change to the policy was a clarification to section 11(c) to indicate that when there are other situations which exist in which the one-fourth Federal staff limit on peer review groups or the Advisory Council requirement is not appropriate, those situations are the result of exceptional circumstances in which such review is not appropriate or feasible. For further information, please contact Jane A. Taylor, Ph.D., Deputy Director for Review Policy and Extramural Operations, Office of Extramural Programs, Substance Abuse and Mental Health Services Administration, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 301–443–4266.

Peer and Advisory Council Review of Substance Abuse and Mental Health Prevention and Treatment Grant Applications and Contract Projects

1. Applicability

The policy applies to competing applications for grants, cooperative agreements, and proposals for contracts received and/or reviewed since October 1, 1992, under mental health and substance abuse prevention and treatment programs administered by the Substance Abuse and Mental Health Services Administration or any of its components. The policy does not apply to applications for:

(1) Continuation funding for budget periods within an approved project period; or

(2) Supplemental funding within a project period.

2. Definitions

As used in this policy:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Administrator" means the Administrator of the Substance Abuse and Mental Health Services Administration.

(c) "Awarding official" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(d) "Budget period" means the interval of time (usually 12 months) into which the project Period is divided for budgetary and reporting purposes.

(e) "Contract project" means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to promote the mission of the agency. This includes (but is not limited to): services systems development projects, surveys, demonstrations, and evaluation of services or services demonstration activity. "Contract project" does not

include contracts for logistical management, technical assistance, and purchase of supplies.

(f) "Contract proposal" means a written offer to enter into a contract, solicited by and submitted to an awarding official by an individual or non-Federal organization, and including at a minimum, a description of the nature, purpose, duration, and cost of the project and the methods, personnel, and facilities to be utilized in carrying it out.

(g) "Department" means the U.S. Department of Health and Human Services.

(h) "Peer review group" means a group of experts qualified by training and experience in particular programmatic, technical, or scientific fields to give expert advice, in accordance with the provisions of this part, on the programmatic and technical merit of grant or cooperative agreement applications or contract projects in those fields.

(i) "Project approach" means the methodology to be followed.

(j) "Project concept" means the basic purpose, scope, and objectives of the project.

(k) "Project period" means the total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.

(l) "Request for proposals" means a Government solicitation to prospective offerors under procedures for negotiated contracts, to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: the nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.

(m) "Unsolicited contract proposal" has the same meaning as in 48 CFR 15.501.

3. Establishment and Operation of Peer Review Groups

(a) To the extent applicable, the Federal Advisory Committee Act (5 U.S.C. App. I), Department implementing regulations (45 CFR Part 11), and Chapter 9 of the Department's General Administration Manual[1] will govern the establishment and operation of peer review groups, including that meetings shall be open to the public except as determined by the Secretary.

(b) Subject to section 5 and paragraph (a) of this section, the Administrator of the Substance Abuse and Mental Health Services Administration will adopt procedures for the conduct of reviews and the formulation of recommendations under Sections 6, 7, 8 and 9 within said agency.

4. Composition of Peer Review Groups

(a) To the extent applicable, the selection and appointment of members of peer review groups and their terms of service will be governed by Chapter 9 of the Department's General Administration Manual. (See Footnote 1).

(b) Subject to paragraph (a) of this section, members will be selected based upon their training and experience in relevant professional, technical, and/or scientific fields, taking into account, among other factors:

(1) The level of formal professional, technical, and/or scientific education completed or experience acquired by the individual;

(2) The extent to which the individual has engaged in relevant activities, the capacities (e.g., project director, administrator) in which the individual has done so, and the quality of such activities;

(3) Recognition as reflected by awards and other honors received from professional or scientific organizations outside the Department; and

(4) The need for the group to have included within its membership experts from various areas of specialization within relevant professional, technical, or scientific fields.

(c) Except as determined in accordance with Section 11, not more than one-fourth of the members of any peer review group established pursuant to this part may be officers or employees of the United States. For purposes of the preceding sentence, membership on such groups does not make an individual an officer or employee of the United States.

5. Conflict of Interest

(a) Members of peer review groups established pursuant to this part are subject to relevant provisions in title 18 of the United States Code relating to criminal activity, the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 11222, as amended.

(b) In addition to any restrictions imposed under paragraph (a) of this section:

(1) No member of a peer review group established pursuant to this part may participate in or be present during any review by that group of a grant application, cooperative agreement application, contract project, or contract proposal in which, to the member's knowledge, any of the following has a financial interest: (i) The member or his or her spouse, parent, child, or partner; (ii) any organization in which the member or his or her spouse, parent, child, or partner is serving as an officer, director, trustee, partner, or employee, or is otherwise similarly associated; or (iii) any organization with which the member or his or her spouse, parent, child, or partner is negotiating or has any arrangement concerning prospective employment or other similar association.

(2) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director, evaluator, or member of the staff responsible for carrying out any activities contemplated as part of a grant application, contract project, or contract proposal, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with Sections 4(b) and 4(c) of this part and, to the extent feasible, Section 4(a) of this part.

(3) Where a member of a peer review group participates in or is present during: (i) Development or review of a project approach or request for proposals by that group; or (ii) review of a contract proposal by that group (under Section 9(c), i.e., after the issuance of a request for proposals); no contract may thereafter be awarded as the result of such development or review to said member, his or her spouse, parent, child, or partner or any organization in which the member, his or her spouse, parent, child, or partner was serving as officer, director, trustee, partner, or employee at the time of such development or review or with which the member, his or her spouse, parent,

[1] The Department of Health and Human Services General Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Printing Office, Washington, D.C. 20402.

child, or partner was negotiating or had any arrangement concerning prospective employment at said time.

(4) No member of a peer review group may participate in any review under this part of a specific grant application or contract project for which the member has had or is expected to have any other responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(c) Where permissible under the statutes, standards, and order cited in paragraph (a) of this section, the Administrator or his or her designee may waive the requirements in paragraph (b) of this section if he or she determines that the potential conflict is minimal and there is no other practical means for securing appropriate expert advice on a particular grant application, contract project, or contract proposal.

6. Grants; Matters To Be Reviewed

(a) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed by a peer review group in accordance with the provisions of this part and that group has made a recommendation for approval concerning the technical merit of such application.

(b) The peer review group to which an application has been submitted under this paragraph shall make a written report on each application which shall contain the following parts:

(1) The first part of the report shall consist of a factual summary of the proposed project, including a description of its purpose, approach, location, and total budget.

(2) The second part of the report shall address the technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in Section 7 and such other factors as specified in the program announcement. This portion of the report shall include a set of recommendations with respect to the disposition of the application based upon its technical merit.

(3) For applications recommended for consideration of funding, the peer review panel shall, at the end of its deliberations, provide both a priority score, based upon the technical merit of the proposed project, and its recommendation regarding the appropriate project period and level of support for the proposed project.

(c) Recommendations are advisory and shall not bind the awarding official or Advisory Council, except that recommendations of the peer review group for disapproval shall be binding on the awarding official or Advisory Council.

(d) All grant and cooperative agreement applications shall be reviewed by the cognizant Advisory Council, except where:

(1) Direct costs do not exceed $50,000, or other amount as provided by statute; or

(2) The Administrator approves an exception in accordance with section 11.

(e) No application shall be reviewed by an Advisory Council until it has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

7. Grants; Review Criteria

In carrying out its review under Section 6, the peer review group will take into account, among other factors as specified in the program announcement:

(a) The potential significance of the proposed project;

(b) The appropriateness of the applicant's proposed objectives to the goals of the program announcement;

(c) The adequacy and appropriateness of the proposed approach and activities;

(d) The adequacy of available resources, such as facilities and equipment;

(e) The qualifications and experience of the applicant organization, the project director, and other key personnel; and

(f) The reasonableness of the proposed budget.

8. Unsolicited Contract Proposals; Matters To Be Reviewed

(a) No awarding official shall award a contract based upon an unsolicited contract proposal covered by this part unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part and the procedures set forth in 41 CFR subpart 3–4.52.

9. Solicited Contract Proposals; Matters To Be Reviewed

(a) Where the approach of a solicited contract proposed is defined in the agency's request for contract proposals, no awarding official shall issue such a request unless the project approach has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

(b) Where the approach of a solicited contract proposal is to be defined in the proposal, no awarding official shall award such a contract unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with this part.

(c) The awarding official may waive the requirements of paragraph (a) of this section for peer review before issuing a request for contract proposals if he or she determines that the accomplishments of essential program's objectives would be placed in jeopardy by delay, or that such review is not in the best interest of the Government. The awarding official shall specify in writing the grounds on which this determination is based. Under such circumstances, the awarding official will not award a contract based on the request for contract proposals unless a peer review group has made recommendations concerning the technical merit of the project approach as defined in the request for proposals, and the proposals received in response to the request have been reviewed by a peer review group. The request for proposals will indicate that the project approach has not been reviewed by a peer review group and that no award will be made until a peer review of the approach is conducted and recommendations made based on such review.

(d) Contract proposals shall be reviewed by the appropriate Advisory Council, except where:

(1) Direct costs do not exceed the amount specified in section 6(d)(1); or

(2) The Administrator approves an exception in accordance with section 11.

(e) Except to the extent otherwise provided for by law, Advisory Council recommendations are advisory and not binding on the awarding official.

10. Contract Projects and Proposals; Review Criteria

(a) In carrying out its review of a project approach under Section 9(a) or 9(b), the peer review group will take into account, among other factors, the following general review criteria:

(1) The merit from a technical standpoint of the goals of the proposed activity;

(2) The adequacy of the methodology to be utilized in carrying out the activity; and

(3) The availability and adequacy of the expertise, facilities, and other resources necessary to achieve these goals.

(b) In carrying out its review of unsolicited contract proposals under section 8, the peer review group will take into account, among other factors, those criteria in section 7 which are relevant to the particular proposals, as well as the extent to which there are

identified, practical uses for the anticipated results of the activity.

(c) In carrying out its review of solicited contract proposals under section 9(c), the peer review group will evaluate each proposal in accordance with the criteria set forth in the request for proposals.

11. Exceptions

The Administrator may make exceptions to the one-fourth Federal staff limit on peer review groups and the Advisory Council review requirement where:

(a) Awards are mandatory, or awarded on a formula or block grant basis;

(b) Awards are made to meet public health emergencies or other urgent health problems such as disaster assistance or significant increases in use of a particular abusable substance; or

(c) Other exceptional situations exist where such review is not appropriate or feasible, such as a time-limited exception to either of the requirements when it is not feasible to conduct such review in order to award grants, cooperative agreements or contracts.

Such exceptions may be made at the discretion of the Administrator who may also approve or impose alternate review procedures, as appropriate.

12. Applicability of Other Regulations

This policy is in addition to, and does not supersede regulations concerning any applications, contract projects, or contract proposals appearing elsewhere in title 41, title 42, or title 45 of the Code of Federal Regulations.

Dated: June 28, 1993.

Joseph R. Leone,

Acting Deputy Administrator, SAMHSA.

[FR Doc. 93–15658 Filed 7–1–93; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 2, 1993.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 25, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 93–15490 Filed 7–1–93; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3343; FR–3137–N–02]

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Section 8 Loan Management Set-Aside (LMSA) Program. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2654. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 24, 1992, at 57 FR 2954. Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $229,507,020 was awarded to 266 projects. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as set forth at the end of this notice.

Dated: June 28, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

List of Loan Management Set-Aside (LMSA) Projects Funded During General Round of Fiscal Year 1992

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
		REGION: 1		
016–44003 ...	Eagle Apartments I, Lincoln, RI ...	Normand H. Allaire, 4 Norton Drive, Cumberland, RI 02864	24	$630,180
016–44011 ...	Riverbend, Cranston, RI	Riverbend Associates, c/o National Investments, Ltd, 1414 Atwood Avenue, Johnston, RI 02919.	85	2,174,700
016–44013 ...	Eagle Apartments II, Lincoln, RI ..	Normand H. Allaire, 4 Norton Drive, Cumberland, RI 02864	18	518,520
016–44054 ...	Rock Ridge, Woonsocket, RI	Related Management Corp., 625 Madison Ave, New York, NY 10022.	24	745,320
016–44067 ...	Evergreen Apartments, East Providence, RI.	Evergreen Associates, c/o National Investments, Ltd, 1414 Atwood Avenue, Johnston, RI 02919.	74	1,988,760
016–44068 ...	Cathedral Square I, Providence, RI.	Cathedral Square Associates, 7 Jackson Walkway, Providence, RI 02903.	25	537,000
016–44072 ...	Festival Field, Newport, RI	Field Associates, L.P., 1225 Eye Street NW., Wash. D.C., 20005 ...	46	1,275,120
016–44091 ...	Woonsocket Village, Woonsocket, RI.	Woonsocket Village Associates, 182 Cumberland Street, Woonsocket, RI 02895.	31	1,007,640
016–55006 ...	Walnut Hill Apts., Woonsocket, RI	Walnut Hill Group, c/o Ferland Corporation, 30 Monticello Road, Pawtucket, RI 02861.	47	1,361,880
016–55007 ...	Kent Farm Village, East Providence, RI.	Kent Farm Company, 151 Tremont Street, Boston, MA 02111	47	1,411,740
017–35187 ...	Brewery Square, New Haven, CT	Brewery Square LP, 130 Prospect St., Cambridge, MA 02139	7	318,540
017–44005 ...	New Hope Towers, Stamford, CT	National Realty Partners, Inc., c/o Midland Property Mgmt, Inc., 10 E. 22nd St, #107, Lombard, IL 60148.	35	1,350,360
017–44013 ...	Ten Marshall House, Hartford, CT	Ten Marshall Hse Associates, 10 Marshall Street, Hartford, CT 06105.	35	650,100
017–44026 ...	Branford Manor, Groton Town, CT.	Branford Manor Associates LP, c/o Ronald A. Nicholson, Gen. Partner, 645 Madison Avenue, New York, NY 10022.	50	1,380,000
017–44100 ...	Mohegan Park Apts, Norwich, CT	Mohegan vlg Lp c/o S. Konover Gp, Konover Residential Corporation, 345 N. Main St., W. Hartford, CT 06117.	32	1,008,000
017–44199 ...	Moosup Gardens, Plainfield Town, CT.	Moosup Gdns, Lp, c/o S. Konover, Konover Residential Corporation, 345 N. Main St, W. Hartford, CT 06111.	10	289,500
017–44204 ...	Mohegan Vlg Apts, Norwich, CT .	Mohegan Vlg Lp c/o S. Konover Gp, Konover Residential Corporation, 345 N. Main St, W. Hartford, CT 06117.	20	630,000
017–SH006 ..	Tower I, New Haven, CT	New Haven Jewish Cmty Cncl Hsg, c/o Tower One/Tower East, 18 Tower Lane, New Haven, CT 06519.	50	1,012,320
023–44048 ...	Riverview West, Pittsfield, MA	Riverview West Associates, c/o The Drucker Co., 50 Federal St. Suite 1000, Boston, MA 02110–2585.	51	1,571,220
023–44099 ...	Litchfield Terrace, Leominster, MA.	Litchfield Terrace Associates, c/o Ronald A. Nicholson, 645 Madison Avenue, New York, NY 10020.	9	230,400
023–44120 ...	Mohawk Forest, North Adams, MA.	Mohawk Forest Associates, 31 Milk Street, Boston, MA 02109	41	938,700
023–44143 ...	Greenfield Gardens, Greenfield Town, MA.	Greenfield Gardens, Co., P.O. Box 186, Cohasset, MA 02025	40	851,040
023–44198 ...	Amy Lowell House, Boston, MA ..	Charles River Park E Co., Five Longfellow Place, Boston, MA 02114.	13	432,120
023–44208 ...	Huron Towers, Cambridge, MA ...	First Realty Management, 151 Tremont Street, Boston, MA	63	2,427,000
023–55005 ...	Bowdoin Apartments, Malden, MA.	National Housing Ministries, 115 Washington Street, Bridgeport, CT	108	3,565,680
023–SH006 ..	Bethany Homes Inc., Haverhill, MA.	Bethany Homes, Inc., 100 Water Street, Haverhill, MA 01830	28	657,720
023–SH008 ..	Senority House, Springfield, MA ..	Springfield Hobby Club Hsg., 307 Chestnut Street, Springfield, MA, 01104.	100	1,342,800
024–44001 ...	Royal Gardens, Concord, NH	Royal Gardens Company, c/o Morton Myerson, 175 Rawson Road, Brookline, MA, 02146.	56	1,370,340
024–44007 ...	Concord Gardens, Concord, NH .	Concord Gardens Company, c/o Morton Myerson, 175 Rawson Road, Brookline, MA, 02146.	59	1,503,060
024–55006 ...	Ross Colony Court, Hampton, NH	Ross Colony Court, Inc., Ross Colony Court, Inc., 93 Winnacunnet Road, Unit 10, Hampton, NH 03842.	8	192,480
		REGION: 2		
012–11048 ...	Fordham Towers, New York–Bronx, NY.	Terrace Fordham Associates, c/o U/A Management Corp., 495 Broadway, New York, NY 10012.	28	987,120
012–11096 ...	1199 Housing Corp., New York–Manhattan, NY.	1199 Housing Corp., 2120 First Ave., New York, NY 10029	245	7,331,160
012–35593 ...	590–600 Associates, Hempstead, NY.	590–600 Associates, 377 Oak Street, Garden City, NY 11530–6543.	103	4,814,160
012–55105 ...	Urban Park, Rochester, NY	I.C. Housing Devel. Fund Co., I.C. Housing Fund Develop. Fund Co., 91 Alexander Street, Rochester, NY, 14608.	52	1,417,560

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
014–44010 ...	Harris Park Apts., Rochester, NY	Harris Park Limited Partnership, The National Housing Partnership, 1225 Eye Street, N.W., Washington, DC 20005.	43	1,009,080
031–44029 ...	Grace Church Van Vor, Jersey City, NJ.	Grace Church Van Vorst Episcop, 39 Erie Street, Jersey City, NJ, 07302.	22	478,560
031–SH019 ..	Daughters of Miriami, Clifton, NJ .	Daughters of Miriam Association, 127 Hazel Street, Clifton, NJ 07015.	71	2,171,040
035–44008 ...	Barlinvis Apartments, Atlantic City, NJ.	Barlinvis Associates, 1 East Stow Road, P.O. Box 994, Marlton, NJ, 08053–0994.	31	899,520
035–55006 ...	Vineland Gardens, Vineland, NJ .	Vineland Gardens, 1 East Stow Road, P.O. Box, Marlton, NJ 08053–0994.	55	1,549,500
		REGION: 3		
000–35278 ...	Woods of Fairfax II, Fairfax, VA ..	Woods of Fairfax II, P.O. Box 40177, Indianapolis, IN 46240	41	1,425,000
000–44050 ...	Parkway Overlook East, Washington, DC.	Parkway Overlook East Apt. Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	52	1,864,080
000–44096 ...	Nalley Apartments, Landover, MD	Nalley Apartments Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	17	765,600
000–44147 ...	Loudoun House Apts., Leesburg, VA.	Loudoun House Limited Prtnshp., c/o NCHP, 1225 Eye Street, N.W., Washington, DC 20005.	75	2,422,440
000–55030 ...	Parkway Overlook West, Washington, DC.	Parkway Overlook West Apt. Ltd., 1801 Avenue of the Stars, Suite 315, Los Angeles, CA 90067.	47	1,943,220
033–35193 ...	Just-Inn Transition, Pittsburgh, PA.	Just-Inn Transition, Inc., 215 Lelia Street, Pittsburgh, PA 15215	15	570,600
033–44002 ...	Penn Circle Towers, Pittsburgh, PA.	Penn Circle Towers Development, 6231 Penn Avenue, Pittsburgh, PA 15206.	26	772,440
033–44007 ...	East Mall, Pittsburgh, PA	East Mall Associates, 6231 East Mall Associates, Pittsburgh, PA 15206.	42	982,920
033–44014 ...	Valley Stream, Delmont, PA	Valley Stream Associates, 901 Elizabeth Street, Pittsburgh, PA 15221.	16	271,380
033–44019 ...	Greenway Park Coop, Pittsburgh, PA.	Greenway Park Cooperative, Inc., 1592 Crucible Street, Pittsburgh, PA 15205.	40	1,227,600
033–44045 ...	Bedcliff, Pittsburgh, PA	Bedcliff Associates, 5604 Baum Blvd., Pittsburgh, PA 15206	1	51,120
033–44048 ...	Crestview Gardens, New Castle, PA.	Casco Associates, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	42	1,068,480
033–44057 ...	Brinton Manor, Braddock Hills, PA.	Brinton Manor No. 1 Associates, 1225 Eye Street, N.W., Suite 601, Washington, DC 20005.	23	690,240
033–44142 ...	Leechburg Gardens, Penn Hills, PA.	Leechburg Gardens, 753 Allegheny River Blvd., Verona, PA 15147	18	384,480
033–55002 ...	East Hills Park Apts., Pittsburgh, PA.	East Hills Park Apartments, 901 Elizabeth Street, Pittsburgh, PA 15221.	13	285,300
033–55008 ...	Liberty Park, Pittsburgh, PA	Liberty Park Company, 3038–C North Federal Highway, Ft. Lauderdale, FL 33306.	71	1,915,980
033–55018 ...	Westgate Village I, Pittsburgh, PA	Broadhead Fording Associates, 5400 Old Court Road, Randallstown, MD 21133.	13	441,840
033–55032 ...	Westgate Village II, Pittsburgh, PA.	Broadhead Associates, 5400 Old Court Road, Randallstown, MD 21133.	19	726,120
034–35156 ...	Stonewood Village, West Manchester TW, PA.	Richard Fore, Mr. Richard Fore, General Partner, 310 Westlake Blvd., Westlake Vil., CA 91362.	50	1,836,000
034–44027 ...	Eastside Apts., Nanticoke, PA	Nanticoke UAW Housing, Inc., 16 Commerce Drive, Cranford, NJ 07016.	30	521,100
034–44049 ...	Wayneview Apts., Philadelphia, PA.	Wayneview Homes, Inc., 805 East Willow Grove Ave., Phila., PA 19118.	12	272,160
034–44061 ...	Eastridge Apts., Harrisburg, PA ...	National Housing Partnership, 1225 Eye Street N.W., Washington, DC 20005.	33	996,180
034–44116 ...	Jamestown Village, Reading, PA	National Housing Partnership, 1225 Eye Street, NW., Washington, DC 20005.	38	1,100,520
034–44808 ...	Enon-Toland Apts., Philadelphia, PA.	Enon-Toland, Inc., 1552 E. Wadsworth Avenue, Phila., PA 19150 ..	5	118,200
034–55021 ...	Elrae Gardens, Philadelphia, PA .	Phila. Hsg. Development Corp., 1234 Market Street, Phila., PA 19107.	20	743,820
034–SH008 ..	Friends Guild Hse., Philadelphia, PA.	Friends Rehabilitation Program, 1221 Fairmount Avenue, Phila., PA 19123.	71	2,087,460
034–SH015 ..	Stephen Smith Towers, Philadelphia, PA.	Stephen Smith Towers, 1030 Belmont Avenue, Phila., PA 19104 ...	41	890,700
034–SH018 ..	Sidney Hillman, Philadelphia, PA	Sidney Hillman Medical Center, 22 South 22nd Street, Phila., PA 19103.	142	3,028,080
034–SH022 ..	Ascension Manor, Philadelphia, PA.	Ascension Manor, Inc., 911 North Franklin St., Phila., PA 19123	61	977 400

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
045–44004 ...	Oakwood Terrace, Charleston, WV.	Kanawha Valley Homes, Inc., 116 Fifth Avenue, Montgomery, WV 20852.	18	433,320
045–44008 ...	Berkeley Gardens, Martinsburg, WV.	Berkeley Gardens Ltd. Ptnership, 12250 Rockville Pike, Suite 200, Rockville, MD 20852.	6	130,200
051–44014 ...	Wilmund Park, Chesapeake, VA .	Wilmund Park, PO Box 5267, Chesapeake, VA 23324	40	942,000
051–44029 ...	Quadrangle, Waynesboro, VA	Quadrangle Assocs., % F&W Corp, PO Box 20809, Roanoke, VA 24018.	25	475,800
051–44034 ...	Tinker Creek, Roanoke, VA	Tinker Creek Apts, 11410 Isaac Newton Sq. No., Reston, VA 22090.	25	594,300
051–44065 ...	Augusta Farms, Augusta County, VA.	Augusta Farms Assocs, % F&W Corp, PO Box 20809, Roanoke, VA 24018.	15	298,500
051–44100 ...	Langley Square 1, Hampton, VA .	Mercury III Associates, 4340 East-West Highway #300, Bethesda, MD 20814.	50	1,465,200
051–44140 ...	Meadowview, Pulaski, VA	Meadowview Apartments, PO Box 20069, Roanoke, VA 24018	60	1,083,000
051–44190 ...	Langley Square 2, Hampton, VA .	Mercury III Associates, 4340 East-West Hwy, #300, Bethesda, MD 20814.	72	2,001,420
051–44216 ...	Willow Woods, Radford, VA	Willow Woods, PO Box 20809, Roanoke, VA 24018	40	759,000
051–44224 ...	Petersburg East 1, Petersburg, VA.	Petersburg East Section 1, National Partnership Invest Corp, 9090 Wilshire Blvd. 3rd, Beverly Hills, CA 90211.	70	1,893,780
051–44225 ...	Northway, Galax, VA	Northway Apartments, PO Box 20809, Roanoke, VA 24018	6	82,800
051–44234 ...	Petersburg East II, Petersburg, VA.	Petersburg East Section 2, National Partnership Invest Corp, 9090 Wilshire Blvd. 3rd, Beverly Hills, CA 90211.	40	1,067,640
051–44239 ...	Huntersvillevillage, Norfolk, VA	Huntersville Development Co, SRM Realty Co, PO Box 5267, Chesapeake, VA 23324.	38	1,407,000
051–55005 ...	Fairhills, Richmond, VA	Fairhills Apartments, 1233 W. Mt. Royal Ave, Baltimore, MD 21217	55	1,170,300
051–55007 ...	Oakmont North 1, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	55	1,241,700
051–55017 ...	Oakmont North II, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	30	693,900
051–55021 ...	Eastridge, Bristol, VA	Eastridge Associates, 2111 W. Montcastle Dr. #6, Johnson City, VA 37604.	40	694,860
051–55027 ...	Oakmont North III, Norfolk, VA	Oakmont Assocs, Great Atlantic, 2 Eaton St. #1100, Hampton, VA 23669.	50	1,148,700
		REGION: 4		
053–44038 ...	Camelot Apts, Gastonia, NC	Camelot Housing Alp, Attn: Eugene A. Gulledge, Gp, P O Box 15580, Alexandria, VA 22309–5580.	53	1,134,240
053–44074 ...	Barrington Oaks, Charlotte, NC ...	Barrington Oaks Associates Alp, Attn: E. Packer Wilbur, 2507 Post Road, Southport, CT 06490.	12	356,520
053–44077 ...	Summit Apartments, Lenoir, NC ..	Spencer Ridge Associates, Attn: William R. Wood, P O Box 97311, Bellevue, WA 98009–7311.	19	392,340
053–44084 ...	First Farmington, High Point, NC	First Farmington Ltd P'ship, Attn: Thomas L. Romp, P O Box 26560, Greensboro, NC 27415–6560.	33	671,280
053–44128 ...	Catawba Arms, Hickory, NC	Catawba Arms Alp, Attn: E. O. Browder, Gp, 2320 Highland Ave., South, Birmingham, AL 35205.	15	297,060
053–44158 ...	Hilltop Apts, Hickory, NC	Hilltop Limited Partnership, Attn: NCHP, Gp, 11410 Isaac Newton Square, Preston, VA 22090.	27	620,280
053–44161 ...	Orchard Park, Charlotte, NC	CP/DB Hsng Partners XIII, % Century Pacific Realty Corp, 1925 Century Park E., Suite 1760, Los Angeles, CA 90067.	9	176,400
053–44257 ...	Newgate Gardens, High Point, NC.	Newgate Gardens Alp, Attn: Thomas Romp, P O Box 26560, Greensboro, NC 27415–6560.	19	354,780
054–35452 ...	Winding Way Apts., Greenville County, SC.	Winding Way Associates, Alp, 110 Centerview Dr., Kingstree Building, Suite 114, Columbia, SC 29210.	12	265,680
061–44005 ...	Fairburn & Gordon I, Atlanta, GA	Fairburn & Gordon Associates, 1225 Eye Street, NW., Washington, DC 20005.	47	1,124,640
061–44019 ...	Meadow Lane, Rome, GA	Michael Stein, 18425 Burbank Blvd., Suite 708, Tarzana, CA 91356	7	151,560
061–44067 ...	Highlands Apartments, Newnan, GA.	Highlands-1984, Ltd., 7770 Poplar Avenue, Suite 106, Germantown, TN 38138.	7	174,720
061–44092 ...	Fairburn & Gordon II, Atlanta, GA	Fairburn & Gordon Associates, 1225 Eye Street, NW., Washington, DC 20005.	10	244,800
061–44097 ...	Tall Pines Apartment, La Grange, GA.	Tall Pines Associates, 5505 Interstate N. Parkway, NW., Atlanta, GA 30328.	10	213,000
061–44169 ...	Mt. Calvary Terrace, Atlanta, GA	NHP, Inc., 1225 Eye Street, NW., Washington, DC 20005	12	359,100
061–44197 ...	Blakewood Apartments Statesboro, GA.	Insignia Management Group, One Shelter Place, Greenville, SC 29602.	7	136,320
061–44212 ...	Linwood Apartments, Gainesville, GA.	Linwood Apartments, Ltd., 504 Fair Street, SW., Atlanta, GA 30313	4	69,000

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
061–44218 ...	Carriage Apartments, Calhoun, GA.	Carriage Apartments, Ltd, 50 Chateau Drive, Rome, GA 30161	4	83,100
061–44244 ...	Madison Apartments, Savannah, GA.	New Madison South Ltd. Ptnrshp, 4750 Laroche Avenue, Savannah, GA 31404.	17	367,080
061–44245 ...	Paradise Carrollton, Carrollton, GA.	Paradise Carrollton Apts., Ltd, 504 Fair Street, SW., Atlanta, GA 30313.	6	122,580
061–44290 ...	Capitol Vanira Atlanta, GA	Capitol Vanira Associates, 504 Fair Street, SW., Atlanta GA 30313	27	807,720
061–44291 ...	Boynton Village Atlanta, GA	Boynton Village Associates, 504 Fair Street, SW., Atlanta, GA 30313.	19	557,640
061–55030 ...	Hollywood West Apts., Atlanta, GA.	H.J. Russell Company, 504 Fair Street, SW., Atlanta GA 30313	12	256,680
061–55043 ...	Anthony Arms Apts, Macon, GA ..	Mr. Edward Herick, Rural Route 1, P.O. Box 660, Waterbury Ctr, VT 05677.	20	409,080
061–55058 ...	Martin Manor Apts., Atlanta, GA ..	Martin Manor Apts., Ltd., 504 Fair Street, SW., Atlanta GA 30313 ..	7	175,560
061–SH007 ..	Calvin Court, Atlanta, GA	Calvin Court, Inc., 479 East Paces Ferry Road, Atlanta, GA 30305	46	803,760
062–35337 ...	Monroe Avenue Apts., Birmingham, AL.	Monroe Avenue Ltd, 5350 Poplar, suite 400, Memphis, TN 38119 ..	4	100,080
062–44055 ...	Dickens Ferry Apts., Mobile, Al ...	Dickens Ferry Apts., Ltd., 200 Crescent Court, #1385, Dallas, TX 75201.	19	362,880
062–44057 ...	Village Green Apts., Mobile, AL ..	Village Green Apts. Co Ltd., 1225 Eye Street NW., Washington, DC 20005.	21	478,620
063–35197 ...	Mabry Village, Tallahassee, FL ...	Belle Vue Associates, Ltd., N 81 W12920 Leon Road, Menomonee Falls, WI 53051.	26	655,200
063–44012 ...	Caravan Apartments, Jacksonville, FL.	Caravan Apartments, Ltd., 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	19	495,180
063–44024 ...	Village Green, Gainesville, FL	Village Green Limited Partners, 1225 Eye Street, NW, Washington, DC 20005.	11	242,400
063–44034 ...	Spring Manor, Ocala, FL	Royal American Housing, Ltd., 1002 West 23rd Street, suite 400, Panama City, FL 32405.	7	152,040
063–44038 ...	Ortega Arms, Jacksonville, FL	Ortega Arms Apartments, Ltd., P.O. Box 47050, Jacksonville, FL 32247.	27	598,500
063–44041 ...	Sutton Place, Ocala, FL	Hickory Ridge Apartments, Ltd., c/o NHP Property Management, 901 N. Lake Destiny Drive, Ste. 161, Maitland, FL 32751.	9	219,000
063–44043 ...	Beachwood Apartments, Jacksonville, FL.	Beachwood Apartments, Ltd., 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	13	310,080
063–44049 ...	Middletown Apartment, Orange Park, FL.	Dr. Joseph J. Lowenthal, 1809 Debarry Avenue, Orange Park, FL 32073.	27	715,740
063–44051 ...	Springfield Residence, Jacksonville, FL.	Springfield Residential One, 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	11	269,640
063–58501 ...	Imperial Estates, Jacksonville, FL	Imperial Estates, Ltd., 345 Market Street, Wooster, OH 44691	45	1,051,200
065–44016 ...	College Heights Apts, Biloxi, MS .	College Heights, Ltd., 1225 Eye Street, NW, Washington, DC 20005.	15	382,200
066–11013 ...	Sabal Palm Villas, Miami, FL	Sabal Palm Villa Apts., Ltd., 2221 Lee Road, Suite 17, Winter Park, FL 32789.	204	4,929,600
066–44043 ...	Broadmoor Apartments, West Palm Beach, FL.	Amreal Corporation, One Shelter Place, Greenville, SC 29602	30	760,560
066–44055 ...	East Green Hills, Perrine, FL	Mr. Luis Gonzales, 17842 SW 107th Avenue, Perrine, FL 33157	24	458,820
066–44072 ...	Stonybrook Apartment, Riviera Beach, FL.	Amreal Corporation, One Shelter Place, P.O. Box 1089, Greenville, SC 29601.	77	1,931,820
066–SH011 ..	Four Freedoms House, Miami Beach, FL.	Four Freedoms House of Miami, I, 2301 Collins Avenue, Miami Beach, FL 33139.	74	1,568,640
067–35277 ...	Armenia Gardens, Tampa, FL	Pinecrest Village Assc. Ltd., 5640 Professional Circle, P.O. Box 41180, Indianapolis, IN 46241.	9	298,620
067–44033 ...	Palm Grove, Orlando, FL	Palm Grove Gardens, Ltd., 4 Cedar Swamp Road, Glencove, NY 11542.	33	920,340
067–44066 ...	Oakhurst Square I, Tampa, FL	Alco Properties, Inc., 35 Union Avenue, Suite 200, Memphis, TN 38103.	16	384,120
067–44103 ...	Tampa Presb. Village, Tampa, FL	Tampa Presbyterian Village, In, 721 Green Street, Tampa, FL 33607.	8	161,520
067–44142 ...	Oakhurst Square II, Tampa, FL ...	New Oakhurst Square, 35 Union Avenue, #200, Memphis, TN 38102.	7	163,800
067–44143 ...	Bonny Apartments, Lakeland, FL	Ba Lakeland Associates, Ltd, 4000–B St. Johns Avenue, #22, Jacksonville, FL 32205.	43	698,040
067–44148 ...	Sand Lake Villas, Orlando, FL	Sand Lake Housing Ltd. partner, C/O New Communities of America, 10501 Joplin, River Ridge, LA 70123.	19	476,520
067–44808 ...	The Columbian, St. Petersburg, FL.	Columbian Knights, Ltd., P.O. Box 47050, Jacksonville, FL 32247 ..	103	1,625,520
067–44814 ...	Presb Homes of Fla, Tampa, FL .	Presbyterian Homes of Fla, Inc, 4011 South Manhattan Avenue, Tampa, FL 33611.	14	212,400

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
067–44816 ...	Presb Homes of Brade, Bradenton, FL.	Presbyterian Homes & Housing, 1051 2nd Avenue North, St. Petersburg, FL 33705.	56	900,540
067–55011 ...	Daytona Village, Daytona Beach, FL.	Daytona Village Apts. Afia Gp, 326 South Grandview Avenue, Daytona Beach, FL 32018.	15	315,420
067–92009 ...	Lake Wales Gardens, Lake Wales, FL.	Lake Wales Gardens Partnership, P.O. Box 2590, West Palm Bea, FL 33402.	16	372,240
081–44002 ...	Pershing Park, Memphis, TN	Frank Jemison, 35 Union Ave., Suite 200, Memphis, TN 38103–2496.	61	1,162,800
081–44018 ...	Corning Village, Memphis, TN	Daniel E. Foley, 1755 E. Martin Luther King Jr. Blvd, Los Angeles, CA 90058.	23	477,960
081–44020 ...	Rolling Hills, Memphis, TN	Frank Z. Jemison, 35 Union Ave. Suite 200, Memphis, TN 38103–2496.	40	703,800
081–44033 ...	Ridgemont Terrace, Memphis, TN	CP/DB Housing Partners XV, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	23	397,140
081–55002 ...	Watkins Manor Apts., Memphis, TN.	Mitchel Stein, 2951 Twenty Eighth Street, Suite 2040, Santa Monica, CA 90405.	37	678,360
086–35032 ...	Millwood Manor, Nashville-Davidson, TN.	Robert D. Short, 2930 Sidco Dr., Nashville, TN 37204	43	1,168,080
086–35128 ...	Peppertree Apts., Memphis, TN ..	Pepper Tree—Memphis, Ltd., 5350 Poplar Suite 400, Memphis, TN 38119.	139	3,882,660
086–44003 ...	Knollcrest, Nashville-Davidson, TN.	Roderick Heller, III, 1225 Eye Street, NW., Washington, DC 20005	63	1,259,580
086–44008 ...	Apollo Apts., Nashville-Davidson, TN.	Robert A. Keenan, 1773 West Harpeth Rd., Franklin, TN 37064	45	858,600
086–44021 ...	Knollcrest Manor, Sparta, TN	L.H. Hardaway Jr., 615 Main Street, P.O. Box 60484, Nashville, TN 37206.	6	101,880
086–44049 ...	High House Village, Dickson, TN	Peter J. Jackson, Skyline Properties, 8235 Douglas Avenue, Dallas, TX 75225.	9	179,460
086–55018 ...	Winstead Manor, Nashville-Davidson, TN.	Robert A. Keenan, 1773 West Harpeth Rd., Franklin, TN 37064	17	273,060
087–55011 ...	Norwood Manor, Knoxville, TN	Robert & Nell Keenen, 908 Battery Lane, Nashville, TN 37220	12	234,000
		REGION: 5		
042–44048 ...	Branch Apartments, Medina, OH .	Carl Milstein, 600 Beta Drive, Mayfield Vill, OH 44143	8	208,320
043–44060 ...	Amberly Square, Columbus, OH .	Amberly Apartments Associates, 105 West Adams St. Suite 3800, Chicago, IL 60603.	22	545,040
046–44143 ...	Pride Apartments, Lockland, OH .	Pride Development Corporation, 11373 Freemantle Drive, Cincinnati, OH 45240.	39	841,740
046–55016 ...	Glenburn Green, Dayton, OH	Glenburn Green Cooperative, IN, 4561 Bufort Blvd., Dayton, OH 45424.	27	506,580
046–55022 ...	Glenburn Green II, Dayton, OH ...	Glenburn Green Coop II, 4561 Bufort Blvd, Dayton, OH 45424	26	495,480
047–35112 ...	Pine Ridge, Grand Rapids, MI	Five Mile Limited Partnership, 5989 Tahoe Drive, Grand Rapids, MI 49546.	24	779,040
047–35115 ...	Oakhill I, Kalamazoo, MI	P.M. Equities, 8137 West Grand River, Suite C, Brighton, MI 48116	24	676,080
047–35117 ...	Country Meadows, De Witt, MI	CMD Associates, 280 N. Woodward Ave., Suite 403, Birmingham, MI 48009.	35	1,035,000
047–35126 ...	The Fountains, Grand Rapids, MI	Three Fountains Limited Pthp, 5989 Tahoe Drive, SE., Grand Rapids, MI 49546.	20	621,600
047–35157 ...	Oakhill II, Kalamazoo, MI	P.M. Equities, 8137 West Grand River, Suite C, Brighton, MI 48116	46	1,295,820
047–44901 ...	New Horizon, Kalamazoo, MI	New Horizon Village Cooperative, 2400 St. Albans Way, Kalamazoo, MI 49001.	24	668,040
048–35035 ...	Greenview Manor, Flint, MI	Greenview Manor Inc., 817 Stevenson, Flint, MI 48502	33	717,000
048–SH027 ..	Essex Manor, Saginaw, MI	Essex Manor Inc., 4000 Harold St., Saginaw, MI 48601	58	1,158,600
071–44011 ...	Vistra Gardens, Chicago, IL	63rd & Michigan Joint Venture, Travis Realty Company, 840 E. 87th Street, Chicago, IL 60619.	40	1,430,940
071–44026 ...	Whispering Oaks II, Waukegan, IL.	Whispering Oaks II Lmtd Ptnshp, 2951 28th St. 90405, Santa Monica, CA 90405.	80	2,166,300
071–44801 ...	Naperville Elderly, Naperville, IL ..	Naperville Elderly Homes, 310 W. Martin Avenue, Naperville, IL 60540.	32	506,880
071–55185 ...	Whispering Oaks I, Waukegan, IL	Whispering Oaks I Lmtd Ptnship, 2951 Twenty Eighth St., Suite 2040, Santa Monica, CA 90405.	68	2,133,480
073–35461 ...	Yorktowne Farms, Greenwood, IN.	Yorktowne Farms Associates, P.O. Box 41180, Indianapolis, IN 46241.	11	328,440
073–44174 ...	Vinton Woods II, Kokomo, IN	Vinton Woods Cooperative, Inc., 3150 Vinton Circle, Kokomo, IN 46902.	5	114,000
075–35138 ...	Juneau Garden Apts., Milwaukee, WI.	Juneau Garden Apartments, 3128 West Ryan Road, Franklin, WI 53132.	30	729,000

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
075–35305 ...	Del Rio Apartments, Milwaukee, WI.	Del Rio Apts., A Ltd. Prtnrshp, 735 North Water Street, Milwaukee, WI 53202.	15	611,100
075–44017 ...	Birch Garden Apts., Kenosha, WI	WCE–I, A Ltd. Prtnrshp, 100 Corporate Place, Suite 403, Peabody, MA 01960.	58	1,387,200
075–44019 ...	Edgewood Manor, Burlington, WI	Burlington 37 Company, P.O. Box 17108, Milwaukee, WI 53217	37	1,265,400
075–44021 ...	Laurel Gardens, Marshfield, WI ...	WCE–I, A Ltd. Prtnrshp, 100 Corporate Place, Suite 403, Peabody, MA 01960.	41	718,020
075–55002 ...	Greentree, Milwaukee, WI	3700 West Greentree Corp., 7 N. Pinckney Street, Suite 225–B, Madison, WI 53703.	83	2,386,740
075–55004 ...	Teutonia Apartments, Milwaukee, WI.	6800 Teutonia Corp., 7 N. Pinckney Street, Suite 255–B, Madison, WI 53703.	16	509,760
075–SH001 ..	Cambridge Apartments, Milwaukee, WI.	Cambridge Apartment Corp. 7 N. Pinckney Street, Suite 225–B, Madison, WI 53702.	83	2,031,780
092–44156 ...	Selby Dayton Rehab, St. Paul, MN.	Leeco Company, 268 Dayton Avenue, St. Paul, MN 55102	31	792,060
092–SH018 ..	Central Towers, St. Paul, MN	Central Towers, Inc., 20 East Exchange Street, St. Paul, MN 55101	59	944,580
092–SH029 ..	Ebenezer Towers, Minneapolis, MN.	Ebenezer Towers, c/o Ebenezer Society, 2722 Park Avenue, Minneapolis, MN 55407.	95	2,039,100
		REGION: 6		
064–44017 ...	Fairwood Manor, Lake Charles, LA.	Federal Property Mgmt Corp, 3038 North Federal Hwy, Ft Lauderdale, FL 33306.	55	1,117,800
064–44030 ...	Spanish Arms Apts., Baton Rouge, LA.	Denham St. Apts. DBA Span. Arm, 4343 Denham Street, Baton Rouge, LA 70806.	43	795,540
064–44071 ...	Northgate Apts., Crowley, LA	Robert L. John, Sr., 600 West Sixteenth Street, Crowley, LA 70526	62	1,060,960
064–44112 ...	Gulfway Terrace, New Orleans, LA.	Century Pacific Hsg Prtsp VII, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	13	246,720
064–44140 ...	Ardenwood Park Apts., Baton Rouge, LA.	Ardenwood Properties, A Ptnshp, 650 N. Ardenwood. Bldg., 5, Baton Rouge, LA 70806.	48	920,04
064–SH008 ..	Monsignor Wynhoven I, Marrero, LA.	Monsignor Wynhoven Apts., Inc., c/o Christopher Homes, Inc., 1000 Howard Avenue, Suite 100, New Orleans, LA 70113.	120	2,024,640
064–SH009 ..	Christopher Inn, New Orleans, LA	Christopher Homes, Inc., 1000 Howard Avenue, Suite 100, New Orleans, LA 70113.	26	518,700
082–35066 ...	Huntington Place, Little Rock, AR	Pete Sisson, General Partner, Tesco, 5350 Popular, Suite 400, Memphis, IN 38119.	33	810,960
082–35226 ...	Old Oaks Apartments, Little Rock, AR.	Lyndell Lay, 3901 McCain Park Drive, Little Rock, AR 72116	10	231,600
112–35286 ...	Irving Oaks, Irving, TX	Irving Oaks, Ltd., 11120 Manor View Circle, Dallas, TX 75228	23	764,520
112–35296 ...	Country Park, Wichita Falls, TX ..	PMG Properties, Inc., 5855 Topanga Canyon, Suite 300, Woodland Hills, CA 91376.	16	385,020
112–55011 ...	Northlake Terrace, Dallas, TX	Northlake Terrace Associates, 1225 Eye Street NW, Washington, DC 20005.	43	1,014,720
113–44018 ...	Timberlake Apts, Arlington, TX	Timberlake Apts. Ltd Ptnrshp, 1225 Eye Street NW, Washington, DC 20005.	21	455,520
113–44032 ...	Continental Terrace, Fort Worth, TX.	Century Pacific Partnership, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	22	432,180
113–44033 ...	Sun Valley, Wichita Falls, TX	JDM Properties, P.O. Box 5117, Lubbock, TX 79415	22	491,880
113–44036 ...	Abilene North Apts, Abilene, TX ..	Abilene North Apts, Ltd., 3625 N Hall, Suite 1140, Dallas, TX 75219.	25	441,420
114–11082 ...	Hampton Place, Nacogdoches, TX.	Campus Colony DBA Hampton Pl., Campus Colony DBA Hampton Place, 201 N. University Avenue, Lubbock, TX 79415.	16	351,360
114–35127 ...	Memorial, Texas City, TX	Leslie A. Harlander, Leslie A. Harlander, 310 Cutting Blvd., Richmond, CA 94804.	20	436,800
114–35197 ...	Pecan Park I, Rosenberg, TX	Pecan Park I, Ltd., Plantation Mgmt., C/O J. Grizzard, 2018 N. Memorial Way, Houston, TX 77007.	25	680,760
114–35230 ...	Pecan Park II, Rosenberg, TX	Pecan Park II Limited, Plantation Mgmt., C/O J. Grizzard, 2018 Memorial Way, Houston, TX 77007.	26	690,960
114–35278 ...	Harbor Lights, Freeport, TX	Harbor Lights Associates, Ltd., Harbor Lights Associates, Ltd., 9000 SW. Freeway, Suite 208, Houston, TX 77074.	60	1,294,800
114–44020 ...	Northline Point, Houston, TX	Richard T. Simoni, Richard T. Simoni, 1324 Crane Street, Menlo Park, CA 94025.	41	985,260
114–44024 ...	Parker Square, Houston, TX	Southward Limited Partnership, National Housing Corporation, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	79	1,849,020
114–44031 ...	Aristocrat, Houston, TX	Aristocrat Apartments, Ltd., National Corporation Housing, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	22	533,760
115–44017 ...	Southridge Apts, Austin, TX	NCHP Asset Management, 1225 Eye Street NW, Washington, DC 20005–0000.	40	956,100

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
115–44073 ...	Riverview Apartments, San Marcos, TX.	H. Garland Stokes, 2520 S. IH 35, Austin, TX 78704–0000	10	211,920
118–35080 ...	Willow Park, Bartlesville, OK	Willow Park Ltd. Partnership, 1050 E. 61 St., Tulsa, OK 74136	15	311,340
118–35084 ...	Willow Creek, Bartlesville, OK	Willow Creek Ltd. Partnership, 1050 E. 61 St., Tulsa, OK 74136	10	195,960
118–44095 ...	Keetowah Village, Muskogee, OK	David Little, 1901 North Kickapoo, Shawnee, OK 74801	30	503,520
118–44107 ...	Terry Hill, Hugo, OK	Hugo Plaza Apts. Ltd., 1601 5 Av., Suite 1900, Seattle, WA 98101	5	78,300
118–55012 ...	Normandy Apartments, Tulsa, OK	R.C. Cunningham, 2692 West I–40, Oklahoma City, OK 73108	92	1,866,120
133–44007 ...	Castle Garden Apts., Lubbock, TX.	Century Pacific Housing Pt. XV, 1925 Century Park East, Suite 1760, Los Angeles, CA 90067.	26	437,940
133–44011 ...	Mt. Franklin, El Paso, TX	Rufus E. Bruce, 114 E San Antonio, El Paso, TX 79901	21	387540
133–44034 ...	Woodcrest Apts, Odessa, TX	Woodcrest Apartments Ltd., 1225 Eye St., NW, Washington, DC 20005.	9	229,920
		REGION: 7		
084–44025 ...	Roanoke Ridge I, Kansas City, MO.	Agia Properties Limited, 3443 Wyoming, Kansas City, MO 64111 ...	22	456,000
084–44028 ...	Cloverleaf Apts, Kansas City, MO	Churchill Properties Ltd, C/O Yarco Co, 4125 Broadway, Kansas City, MO 64111.	119	2,973,900
084–44032 ...	Van Horn Place Apts, Independence, MO.	Van Horn Place, C/O Town Square Properties, 314 West 24 Highway, Suite 201, Independence, MO 64050.	31	642,540
084–44039 ...	Meadowridge Th I, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th, Blue Springs, MO 66015.	8	168,480
084–44040 ...	Meadowridge Th II, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th, Blue Springs, MO 66015.	6	126,600
084–44041 ...	Meadowridge Th III, Blue Springs, MO.	Meadowridge Townhouses, Inc., 1620 South 9th Blue Springs, MO 64015.	5	105,720
084–44090 ...	Royal Gardens, Kansas City, KS	Royal Gardens Limited, Robert Hughes, Sr., General Partner, 1021 North Seventh Street, Kansas City, KS 66101.	12	259,200
084–44119 ...	Parvin Estates, Kansas City, MO	Shawmet Homes Inc, 4125 Broadway, Kansas City, MO 64111	44	922,440
084–55027 ...	Terrace View I, Kansas City, MO	Orlando Investment Corporation, 3108 East Ninth, Kansas City, MO 64124.	35	713,220
085–35337 ...	Columbus Square Apts, St. Louis, MO.	Columbus Square Assoc. II, 415 Debaliviere Ave, St. Louis, MO 63112.	20	561,600
085–35359 ...	Blair School Apts, St. Louis, MO .	Blair School Ltd Ptnshp, 1101 Lucas Ave, St. Louis, MO 63101	5	145,260
102–44082 ...	Greenbriar–Dodge City, Dodge City, KS.	A. E. Rudd, 614 Magnolia Gardens, Garden City, KS 67846	4	72,540
		REGION: 8		
101–38016 ...	St Moritz Towers, Denver, CO	Acoma Street Assoc. Ltd, 1777 South Harrison #309, Denver, CO 80210.	46	845,820
101–44146 ...	Argonaut Apts, Denver, CO	Jona Goldrich, Goldrich & Kest 5150 Overland Ave, Culver City, CA 90230.	27	512,460
105–44002 ...	Normandie I, Ogden, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	19	377,760
105–44007 ...	Vine Villa, Murray, UT	Vine Villa LTD PTSP, 35 Century Parkway, Slc, Ut 84115	10	166,800
105–44022 ...	Normandie II, Ogden, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	8	167,760
105–44029 ...	La Dawn I, Roy, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	26	533,400
105–44034 ...	La Dawn II, Roy, UT	Thompson-Rawson Co, 5175 West 4000 South, Hooper, UT 84315	29	595,680
		REGION: 9		
121–35796 ...	Pioneer 2000 Santa Rosa, CA	Pioneer 2000 Limited, 5855 Topanga Canyon Blvd., Suite 300, Woodland Hill, CA 91367.	31	1,193,400
121–35801 ...	Sea Breeze Apts, Vallejo, CA	Thomas & Angelita F. Tomanek, 26601 Durham Way, Hayward, CA 94542.	71	2,611,500
121–44027 ...	All Hallows Gardens, San Francisco, CA.	All Hallows Association, 11410 Issac Newton Square North, Reston, VA 22090–5021.	8	279,120
121–44053 ...	Western Park, San Francisco, CA	Northern California Presby Hom, 1525 Post Street, S.F., CA 94109–6560.	41	992,700
121–44127 ...	Vincentian Villa, San Francisco, CA.	Vincentian Villa, 1170 Market St. Suite 500, S.F., CA 94103	22	434,280
121–44131 ...	Loren Miller Homes, San Francisco, CA.	Loren Miller Corporation, 937 McAllister St, S.F., CA 94115	20	619,680
121–44233 ...	Josephine Lum Lodge, Hayward, CA.	Josephine Lum Lodge, Inc., 2747 Oliver Drive, Hayward, CA 94545	36	584,460
121–44337 ...	Kings Canyon, Fresno, CA	Kings Canyon Apts., Ltd., Goldrich and Kest, 5150 Overland Avenue, Culver City, CA 90231–3623.	39	1,168,320

LIST OF LOAN MANAGEMENT SET-ASIDE (LMSA) PROJECTS FUNDED DURING GENERAL ROUND OF FISCAL YEAR 1992—Continued

FHA No.	Project's name, city and state	Owner's name and address	LMSA units funded	Budget authority
121–44365 ...	Barrett Terrace, Richmond, CA ...	Greater Richmond Community Dev, 1125 Eye St. NW., Washington, DC 20005.	15	489,060
121–44366 ...	Barrett Plaza, Richmond, CA	Greater Richmond Community Dev, 1125 Eye St. NW., Washington, DC 20005.	13	477,360
121–44410 ...	Betel Apartments, San Francisco, CA.	Mission Housing Deve Propty 2, 2922 Mission Street, S.F., CA 94110.	4	144,960
121–44440 ...	Bayview Apartments, San Francisco, CA.	Bayview Hunters Point Apts, 11410 Isaac Newton Square North, Reston, VA 22090–5012.	5	193,500
121–44810 ...	Bethany Center, San Francisco, CA.	Bethany Center Senior Hous, Inc, 580 Capp St, S.F., CA 94110	14	355,740
121–44811 ...	Pleasanton Gardens, Pleasanton, CA.	Pleasanton Gardens, Inc., 251 Kottinger Drive, Pleasanton, CA 94566.	9	135,780
121–44813 ...	Town Park Towers, San Jose, CA.	Northern California Presbyteri, 1525 Post Street, San Francisco, CA 94109–6569.	15	352,500
121–55073 ...	Crescent Village, Suisun City, CA	Crescent Associates, 12 Canyon Oak Place, Danville, CA 94526 ...	24	728,280
122–94001 ...	Traymore Apts, Los Angeles, CA	Traymore Limited, 5699 Kanan Road No 234, Agoura Hills, CA 91301.	53	1,816,200
122–94019 ...	Wilshire Villas No	Thomas Bell, 12661 Sunswept Ave, Garden Grove, CA 92643	56	1,895,880
123–44026 ...	Fry Apartments, Tucson, AZ	Fry Development, 260 S. Pantano #127, Tucson, AZ 85710	28	420,480
136–44130 ...	Santa Clara Terrace, Roseville, CA.	Santa Clara Terrace, Alp, Eugene Burger, Gp, 481 Via Hidalgo, Greenbrae, CA 94904.	12	321,960
136–44158 ...	Vernal Apartments, Manteca, CA	Vernal Housing Limited Partner, Eugene Burger, Gp, 481 Via Hidalgo, Greenbrae, CA 94904.	15	332,100
143–38005 ...	Briarwood Manor, Montclair, CA ..	Briarwood Manor Partnership, 481 Via Hidalgo, Greenbrae, CA 94904.	40	1,655,100
		REGION: 10		
124–44004 ...	Alpine Manor, Boise, ID	Rockwood Alpine Oregon Ltd, 13500 SW Pacific Hwy, Ste 200, Portland, OR 97223.	23	514,500
126–44116 ...	The Plaza, Portland, OR	William R. Wood, P.O. Box 97311, Bellevue, OR 98009	29	1,058,100
126–94002 ...	Down Manor, Hood River, OR	Louis Nex, Jr, Down Manor Inc, 3260 Brookside Drive, Hood River, OR 97031.	20	567,600
171–44034 ...	Pinecrest Apt, Pasco, WA	Patricia S. Nettleship, 2665 Main St., Suite 220, Santa Monica, CA 90405.	28	553,140

[FR Doc. 93–15653 Filed 7–1–93; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–4333–02–RPRN]

Call for Gila Box Advisory Committee Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill two positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to title 2, section 201, of the Arizona Desert Wilderness Act of 1990.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of pubic lands in the Gila Box Riparian National Conservation Area. Members are currently assisting BLM with the selection of a preferred alternative for the final Gila Box Interdisciplinary Activity Plan. The Advisory Committee is meeting at least every two months during this part of the planning process. Members serve without salary, but are reimbursed for travel and per diem expenses at current rate for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific ares related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, archaeology, hydrology, recreation, environmental education, or other related disciplines.

Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide names, addresses, professions, biographical data, and category of expertise for qualified nominees. Persons selected to serve on the Committee will serve a three-year term ending on July 31, 1996. Nominations should be submitted to the Safford District Manager at the address below.

DATES: All nominations should be submitted to the District Manager, 711 14th Avenue, Safford, Arizona 85546, and received by July 30, 1993.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Jonathan Collins, Gila Box Coordinator, Gila Resource Area, Safford District Office, 711 14th Ave., Safford, Arizona 85546, telephone (602) 428–4040.

Dated: June 24, 1993.

William T. Civish,

District Manager.

[FR Doc. 93–15657 Filed 7–1–93; 8:45 am]
BILLING CODE 4310–32–M

[NV-040-4191-03]

Intent To Prepare an Environmental Impact Statement; Robinson Mine Project, White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management's (BLM) Ely District Office gives notice of its intent to develop an environmental impact statement (EIS) pursuant to section 102(2)(e) of the National Environmental Policy Act of 1969 and to 43 CFR part 3809 for the Robinson Mine Project. This project is located in White Pine County, Nevada. This EIS will be prepared by contract, funded by the proponent, Robinson Mining Limited Partnership (RMLP). The BLM invites comments and suggestions on the scope of the analysis.

DATES: Written comments on the scope of the EIS will be accepted until August 6, 1993.

ADDRESSES: Scoping comments are to be sent to: Ely District Manager, HC 33 Box 33500, Ely, NV, 89301.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Daniel R. Netcher at (702) 289-4865.

SUPPLEMENTARY INFORMATION: The RMLP proposes to construct and operate a copper mining facility in the Robinson Mining District near Ely, Nevada. The majority of the operation will be conducted on 3,324 acres of private land owned or controlled by Magma Nevada Mining Company. The operation will also take place on 1,965 acres of public land administered by the BLM. Public lands will be required for a mill tailings impoundment and ancillary facilities, leach facilities, powerline and water pipeline corridors, and small portions of waste rock disposal areas. A total of 5,289 acres of public and private lands will be used by the copper operation.

The Mining District has been extensively mined for copper for nearly a century, most recently by Kennecott Copper Corporation (Kennecott). Kennecott ceased its mining activities in 1978, leaving an area of over 3,170 acres of private land and approximately 240 acres of public land unreclaimed. This surface disturbance includes three large open pit mines and at least seven discrete waste rock disposal areas.

RMLP's Robinson Mine Project will consist of continued mining in the three existing open pits, expansion of some of the existing waste rock dumps, construction of a new sulfide concentrator to produce copper and molybdenum concentrates, and construction of a copper heap leaching, solvent extraction and electrowining (SX/EW) facility to produce copper cathodes. An electrical powerline will be constructed from the Gonder Substation near McGill, Nevada to the project area.

Based on currently identified ore reserves and anticipated mining rates, the project is expected to have an active life of approximately 18 years. An average daily production of approximately 650 tons of copper concentrate, 50 tons of cathode copper, and 2 tons of molybdenum concentrate are planned for the facility.

The issues expected to be analyzed in the EIS are impacts to: Surface and groundwater quality and quantity, air quality, socio-economics, threatened and endangered species, cultural resources, visual impacts, wildlife, truck traffic haulage of mining chemicals and concentrates, and mine reclamation.

Dated: June 28, 1993

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-15679 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-050-4410-02]

Intent To Supplement the Draft Stateline Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent. The Bureau of Land Management (BLM) is proposing to prepare a supplement to the Draft Stateline Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) to analyze issues not addressed in the draft document.

SUMMARY: Based on comments from agencies and the general public and evaluation on the draft document, the BLM has determined that the following issues require further analysis and public review: (1) Ephemeral/perennial rangeland classification, (2) utility corridor locations at Henderson, Paiute Valley, Dry Lake/Apex Area, and Pahrump and corridor width throughout the planning unit, (3) Mineral Management/Post Congressional Non-Designation of Wilderness Study Areas (WSA), and (4) Tortoise Recovery Plan implications.

DATES: A public coordination period has been scheduled from July 1 to August 2, 1993 in advance of the preparation of the supplement.

ADDRESSES: All comments and concerns you may have with this proposed supplement are to be submitted to: Bureau of Land Management, Attention: Stateline Area Manager, P.O. Box 26569, Las Vegas, NV 89126 or hand delivered to the BLM District Office at 4765 Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Marvin D. Morgan, Stateline Resource Area Manager, or Jerry C. Wickstrom, RMP Team Leader, at the above address or telephone (702) 647-5000.

SUPPLEMENTARY INFORMATION: Issues that will be addressed in the proposed supplement to the Draft Stateline RMP/ EIS include:

(A) Rangeland Classification—The reclassification of certain grazing allotments from "ephemeral" to "ephemeral/perennial" or "perennial".

(B) Utility Corridors—Alternative corridor locations in the Henderson, Dry Lake/Apex, and Pahrump areas. It will also discuss a more precise narrower corridor concept throughout the planning area.

(C) Minerals Management/Post Congressional Non-Designation of WSAs—Management objectives and direction for released WSAs under the mining and mineral laws.

(D) Tortoise Management—Desert Tortoise management as outlined in the Draft Recovery Plan of April, 1993 (developed by the Fish and Wildlife Service). It will address only those recommendations not covered in any of the alternatives in the Draft Stateline RMP/EIS.

A 90 day public review of the supplement will be provided at a later date. After the public review and comments, the results of the supplement will be combined with comments previously received on the Draft Stateline RMP/EIS and will be used to develop the Proposed Stateline RMP/ Final EIS (FEIS). The Proposed RMP/ FEIS is scheduled for release in June, 1994.

Federal, state and local agencies, and other individuals or organizations who are interested in or affected by aspects of the proposed supplement are invited to participate in the process. Comments and recommendations will be accepted only on those subjects being addressed in this supplement to the Draft Stateline RMP/EIS. Comments that are specific are the most helpful.

Dated: June 28, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-15680 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-HC-M

[ID-942-03-4730-02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 25, 1993.

The plat representing the dependent resurvey of portions of the Fourth Standard Parallel North (south boundary) and subdivisional lines, the subdivision of section 32, and survey of Lots 1, 2, 5, 6, and 7, in section 32, Township 18 North, Range 8 East, Boise Meridian, Idaho, Group No. 832, was accepted June 16, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 25, 1993.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-15656 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-GG-M

[UT-060-03-4210-05; UTU-67449]

Realty Action; Noncompetitive (Direct) Sale of Public Land in Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, UTU-67449, Noncompetitive (Direct) Sale of public land in Carbon County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcel has been found suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3-3):

Salt Lake Meridian, Utah
T. 14 S., R. 10 E.,
Section 23, W½NE¼NE¼.
The described land aggregates 20.00 acres more or less.

The subject parcel of land has been leased to Carbon County since 1980 for use as a sanitary landfill, through the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869). A complete Environmental Audit as well as a Regulatory Compliance Audit have been completed on the landfill. In addition, approval from the Director of the Bureau of Land Management to transfer the land to Carbon County has been received.

The parcel is difficult and uneconomic to manage as part of the public lands, is not needed for any resource programs, and is not suitable for management by the Bureau or any other Federal department or agency. The parcel (UTU-67449) is being offered as a noncompetitive (direct) sale in accordance with 43 CFR 2711.3-3 to Carbon County, Utah. The land will not be offered for sale until at least sixty (60) days after publication of this notice in the **Federal Register**. The sale will be at no less than the appraised fair market value.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sales Are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

a. A right-of-way, Serial No. UTU-002283, to PacifiCorp dba UP & L, its successors or assignees, for a powerline located in SLM, T. 14 S., R. 10 E., Section 23, W½NE¼NE¼, under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

b. A right-of-way, Serial No. UTU-015341, to PacifiCorp dba UP & L, its successors or assignees, for a powerline located in SLM, T. 14 S., R. 10 E., Section 23, W½NE¼NE¼, under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

Sale Procedures: The buyer will be required to submit the fair market value of the property on the date of the sale. The land will be offered for sale at the Price River Resource Area Office.

Bidder Qualifications: Bidder must be U.S. citizen 18 years of age or over, a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab Distict Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: June 24, 1993.

William C. Stringer,

Associate District Manager.

[FR Doc. 93-15729 Filed 7-1-93; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-080-03-4110-99]

Vernal District Advisory Council Tour

AGENCY: Bureau of Land Management.

ACTION: Notice of Advisory Council Tour.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and CFR part 1780, that a Vernal District Advisory Council Tour will be conducted on Tuesday, July 20, 1993. The purpose of the tour is: to familiarize the Council with new land the District is acquiring in a land exchange with the Rocky Mountain Elk Foundation and discuss future management opportunities; to tour the White River Oil shale facilities and discuss possible future site and facility uses; to visit Coyote Basin Oil Field and discuss oil exploration, production, and coordination with the National Park Service and to discuss possible black-footed ferret reintroduction into the Coyote Basin area.

The tour agenda is as follows:

Vernal District Advisory Council Tour, July 20, 1993

8:30 a.m. Begin tour at BLM office
9:00 a.m. Stop at Coyote Basin Oil Field
Discuss: Oil exploration and production coordination of oil field activities with NPS reintroduction of black-footed ferrets
10:30 a.m. Tour White River Oil shale facilities discuss potential future use of the facilities and site
11:30 a.m. Visit and discuss oil shale patent applications
1:00 p.m. Have lunch and tour Hill properties on Bitter Creek being acquired through exchange with the Rocky Mountain Elk Foundation

Discuss options for future management including:

Livestock grazing
Riparian restoration
Water quality and fisheries
Public access/recreation
Wildlife habitat improvements
Stabilization/use of historic structures
4:00 p.m. Tour Wolf Den portion of Hill property
6:00 p.m. Arrive back in Vernal

The tour is open to the public; however, they would be required to furnish their own transportation and food.

FOR FURTHER INFORMATION, CONTACT: David E. Little, Vernal District Manager, Phone (801) 789–1362.

Dated: June 29, 1993.

David E. Little,

District Manager.

[FR Doc. 93–15880 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Concession Contract Negotiations; Bandelier National Monument, NM

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued snack bar and gift shop services for the public at Bandelier National Monument, New Mexico, for a period of five (5) years from date of final execution of the concession contract.

EFFECTIVE DATE: August 31, 1993.

ADDRESSES: Interested parties should contact Superintendent Roy Weaver, Bandelier National Monument, HCR 1, Box 1, Suite 15, Los Alamos, New Mexico 87544, (505) 672–3861, for requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1992, and, therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20d), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: February 25, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–15744 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–70–M

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: July 21, 1993 9 a.m.–3 p.m.

ADDRESSES: Keya Paha County High School (library), Football Avenue, Springview, Nebraska.

Agenda topics include: Discuss comments received by the commission members from the community; an update, and discussion on the status of the draft statements prepared for the Niobrara Scenic River General Management Plan by the National Park Service planning team; the opportunity for public comment, and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplished the agenda for the meeting the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of Minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40 mile and 30 mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent; Niobrara/Missouri National Scenic Riverways; P.O. Box 591; O'Neill, Nebraska 68763–0591. Telephone: (402) 336–3970.

Dated: June 23, 1993.

William W. Schenk,

Acting Regional Director.

[FR Doc. 93–15745 Filed 7–1–93; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Notice No. 40853]

Yellow Freight System, Inc. of Indiana—Petition for Declaratory Order—Weighing Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by Yellow Freight System, Inc. of Indiana (Yellow), the Commission has instituted a declaratory order proceeding to determine whether (1) the Commission has exclusive jurisdiction over the reasonableness of Yellow's practice of verifying shipment weights using forklift scales; and (2) more stringent State requirements for scale accuracy are preempted. An opportunity to participate in the proceeding is provided to interested persons, and their comments are invited.

DATES: Written comments must be filed August 1, 1993. Additional filings will be scheduled only if required.

ADDRESSES: Send an original and 10 copies of all comments to: Attn: No. 40853, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy to each of the following representatives of Yellow: Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; and Jerry C. Bowlin, 10777 Barkley, Overland Park, KS 66211.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 or Joseph C. Levin, (202) 927–6287. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: The Commission has instituted a declaratory order proceeding under 5 U.S.C. 554(e) on Yellow's request to terminate a controversy with State authorities concerning Yellow's practice of weighing interstate shipments with a forklift scale. Yellow is a major motor carrier engaged in the transportation of less-than-truckload (LTL) shipments throughout the United States. As provided for in its tariff, Yellow has been verifying shipper supplied weight information by using mobile forklift scales that are not certified "legal for trade," because they do not conform with State requirements.

Yellow indicates that it randomly reweighs only a few shipments and more frequently reweighs shipments of customers having a history of inaccurate weights. Yellow indicates that it has not received any complaints from shippers about its reweighing practice.

Yellow's use of forklift scales has been cited by the States of Maryland and Nevada for being inconsistent with State law. Both States require that scales be calibrated to a tolerance of 0.1 percent to conform with the National Institute of Standards and Technology (NIST) Handbook 44, for Class III scales. Yellow's forklift scales are calibrated to a tolerance of 1 percent. Both States have advised Yellow that its "not legal for trade" forklift scales cannot be used to determine freight charges. Both States disagree with Yellow's contention that the Commission has exclusive jurisdiction over this aspect of interstate trucking and that the State requirements are a burden on interstate commerce.

Yellow believes it would be significantly burdened if shipments had to be weighed on State-certified scales. It also questions whether any legitimate State interest is served by mandating a 0.1 percent tolerance. It asserts that a 1 percent tolerance is more than adequate to assess freight charges for LTL shipments. Allegedly, the difference between a 0.1 percent tolerance and a 1 percent tolerance would not significantly affect the charges.

The National Conference of Weights and Measures (NCWM) commented on Yellow's position. It believes that Yellow's position is inconsistent with uniform weighing requirements adopted by all 50 States and the District of Columbia. It contends that the standards have been adopted universally, and are not an undue burden on interstate commerce.

The Department of Commerce, NCWM, State agencies, motor carriers, shippers, and other interested members of the public are invited to comment on these issues. Any person seeking to participate in support of, or, in opposition to Yellow's position, should submit written representations, views, or arguments to the Commission. Copies of Yellow's petition, NCWM's comments, and Yellow's reply are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons dissented and continues to believe that a declaratory order is not necessary at this time as no case or controversy exists.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15716 Filed 7–1–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32304]

Gateway Eastern Railway Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

Gateway Eastern Railway Company (GERC), a noncarrier, has filed a notice of exemption to acquire from Consolidated Rail Corporation (Conrail) and to operate 16.69 miles of rail lines in St. Clair County, IL: (1) 14.79 miles between milepost 243.5 at "WR" Tower in Granite City and milepost 0.91 at East Alton;[1] and (2) 1.90 miles between milepost 236.8 at "Willows" interlocking in East St. Louis and milepost 238.7 at "Q" Tower in East St. Louis.[2] GERC will also assume by assignment Conrail's existing overhead trackage rights over the Terminal Railroad Association of St. Louis between "WR" Tower and a point near "Willows" interlocking, a distance of approximately 5.25 miles. GERC expects to become a class III rail carrier upon consummation of the transaction. The parties plan to consummate the transaction on or after June 10, 1993, the effective date of this notice of exemption.[3]

[1] A change in the numbering system accounts for what appears to be a discrepancy between these milepost designations. Also included in the agreement is Conrail's interest in (1) the Roxanna Industrial Track, (2) a joint switching agreement at Alton, IL, and (3) a 1906 joint use agreement from "WR" Tower in Granite City to Wann, covering the Conrail line (operated eastward) and the parallel GWRC-SPCSL Corp. line (operated westward).

[2] Under its interchange agreement with Conrail, GWER will operate into Conrail's Rose Lake Yard, just east of "Willows" interlocking.

Conrail will retain a non-exclusive easement and overhead trackage rights over the 1.90-mile line to maintain, via other carriers, its access to the MacArthur Bridge over the Mississippi River and certain river terminals south of "Q" Tower.

[3] Unless they file a voting trust under 49 CFR 1013, the actual consummation date will depend on the effective date of a related proceeding, Finance Docket No. 32306. There, Gateway Western Railway Company (GWRC), which wholly owns GERC, and Wertheim Schroder & Co., Inc., which controls GWRC, seek an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, to continue in control of GERC when it becomes a carrier. This proceeding is also related

Continued

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: Robert H. Wheeler, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Dated: June 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15715 Filed 7–1–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Supplemental Telephone Communications Survey
1220–0146
Annually
Businesses or other for-profit
14 respondents; 171.4 hours per response; 2400 total hours; 1 form

Detailed information pertaining to the inputs of local exchange carriers in the telephone communications industry is needed for productivity statistics. The information will be used in a multifactor productivity measure for the local telephone communications industry. The respondents are regional Bell operating companies and other local exchange carriers, who have all agreed to participate.

Signed at Washington, DC this 22nd day of June, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–15731 Filed 7–1–93; 8:45 am]

BILLING CODE 4510–24–P

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

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to Finance Docket No. 32307, where GWRC filed a notice of exemption to acquire overhead trackage rights from GERC over a portion of Conrail's line described in (2) above to be acquired by GERC, and to Finance Docket No. 32305, where GEWR and GWRC jointly seek an exemption under section 10505 from the prior approval requirements of 49 U.S.C. 10901 to construct a connection between a proposed new GWRC line (discussed below) and the lines to be acquired by GERC. Because these concurrently filed exemptions will, if consummated, have the cumulative effect of connecting GWRC and Conrail lines, they are also relevant to the Commission's consolidated decision in Finance Docket Nos. 32158 and 32158 (Sub-No. 1), *Gateway W. Ry. Co.-Const. Exempt.-St. Clair County IL, et al.* (not printed), served May 11, 1993. There, the Commission conditionally granted GWRC an exemption to construct and operate a rail line at East St. Louis but requested additional evidence on whether the construction of certain related crossings would result in the Conrail connection now proposed and on what the traffic consequences of such a connection would be. Petitions to reopen and revoke these exemptions are now pending before the Commission.

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Kansas
KS930023 (July 2, 1993)
KS930024 (July 2, 1993)
KS930025 (July 2, 1993)

Volume III

Arizona
AZ930005 (July 2, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930007 (Feb. 19, 1993)
AL930008 (Feb. 19, 1993)
AL930033 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930007 (Feb. 19, 1993)
New York
NY930008 (Feb. 19, 1993)
Pennsylvania
PA930023 (Feb. 19, 1993)
Virginia
VA930005 (Feb. 19, 1993)
VA930033 (Feb. 19, 1993)
VA930036 (Feb. 19, 1993)
VA930048 (Feb. 19, 1993)
VA930065 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)

Volume II

Illinois
IL930001 (Feb. 19, 1993)
IL930002 (Feb. 19, 1993)
IL930003 (Feb. 19, 1993)
IL930004 (Feb. 19, 1993)
IL930005 (Feb. 19, 1993)
IL930007 (Feb. 19, 1993)
IL930008 (Feb. 19, 1993)
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IL930011 (Feb. 19, 1993)
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IL930015 (Feb. 19, 1993)
IL930017 (Feb. 19, 1993)
Kansas
KS930004 (Feb. 19, 1993)
KS930006 (Feb. 19, 1993)
KS930008 (Feb. 19, 1993)
KS930009 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930014 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930022 (Feb. 19, 1993)

Volume III

Alaska
AK930001 (Feb. 19, 1993)
Arizona
AZ930001 (Feb. 19, 1993)
AZ930002 (Feb. 19, 1993)
Colorado
CO930001 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)
ID930002 (Feb. 19, 1993)
North Dakota
ND930001 (Feb. 19, 1993)
ND930002 (Feb. 19, 1993)
Oregon
OR930001 (Feb. 19, 1993)
OR930004 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930003 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
WA930010 (Feb. 19, 1993)
WA930011 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 25th day of June 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–15453 Filed 7–1–93; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–28, 425]

Pennshire Stores, Plant #2 Portage, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 25, 1993, the petitioners and former workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the **Federal Register** on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following conditions:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the subject firm produced men's and boys' suits and topcoats only for its parent company, Charles Navasky & Company in Philipsburg, Pennsylvania. The findings show that although topcoat production and sales at Portage accounted for a substantial portion of Portage's production and sales in 1992, the workers were not separately identifiable by product. The plant closed in January, 1993.

The petitioners state that the Department based its findings on men's and boys' suits and not on topcoats. The petitioners asked whether the Department's survey included topcoats as well as men's and boys' suits and whether the other company plants were surveyed.

Investigation findings show that the Department's denial was based on the fact that the "contributed importantly" test of the Trade Act was not met. The Department's survey included topcoats as well as men's and boys' suits. The survey findings showed that there were no company imports of men's and boys' suits and topcoats and that sales did not decrease.

Company officials stated that production was reorganized and the Portage plant was closed because the company had unused capacity at its Philipsburg plants which were more economically operated.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 22nd day of June 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–15732 Filed 7–1–93; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,421; Precision Castparts Corp., Portland, OR

TA–W–28,374; Teledyne Wah Chang Albany, Albany, OR

TA–W–28,189 & 28, 189A; Unisys Corp., Eagan MN and Roseville, MN

TA–W–28,427; Kingston-Warren Corp., Wytheville, VA

TA–W–28,562; Rogue Valley Printed Circuits, Inc., Medford, OR

TA–W–28,561; Syntron, Inc., Houston, TX

TA–W–28,474; Border Steel Rolling Mills, Inc., EL Paso, TX

TA–W–28,505; Osram Sylvania, Inc., Circuit Assembly, Williamport, PA

In the following cases, the investigation revealed that the Criteria for eligibility has not been met for the reasons specified.

TA–W–28,543; Planters/Lifesavers Co., Amsterdam, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,655; North American Energy Service, Rainer, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,609; General Dynamics, Convair Div., San Diego, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,351; Todd Pacific Shipyards Corp., Seattle, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,585; Campbell Tobacco Rehandling Co., Inc., Mayfield, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,483; KP/Stant Corp., El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,617; Timeslice Technology, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,750; Communications Instruments, Inc., Midtex Div., El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,653; Tupperware Manufacturing, Halls, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,456; Schlumberger Gico-Prakla, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–28,566; Nicolette Fashions, Inc., West New York, NJ*****

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,350; United Technologies Motors Systems, Inc., Brownsville, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–28,513; Swift Adhesives, Inc., Portland, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,528 & TA–W–28,528A; Hilti Steel Industry Div., Tulsa, OK and Sisco, Inc., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,469; Magic Chef Co., Cleveland, TN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,498; Boise Cascade Corp., Plywood Div., Yakima, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,631; Pyke Manufacturing Co., Lehi, UT

A certification was issued covering all workers engaged in the production of ladies' apparel separated on or after April 23, 1992.

TA-W-28,467; Ozalid Corp., Vestal, NY

A certification was issued covering all workers separated on or after March 8, 1992.

TA-W-28,523; Conemaugh & Black Lick Railroad Co., Johnstown, PA

A certification was issued covering all workers separated on or after March 19, 1992.

TA-W-28,554, TA-W-28,555, TA-W-28,556, TA-W-28,557, TA-W-28,558, TA-W-28,559, TA-W-28,560; Smith Energy Services, Farmington, NM, Midland, TX, Longmont, CO, Vernal, UT, Casper, WY, Denver, CO and Houston, TX

A certification was issued covering all workers separated on or after March 31, 1992.

TA-W-28,533; TRW Vehicle Safety Systems, Washington, MI

A certification was issued covering all workers engaged in the production of pain line operations for metal fabricated seat belt components separated on or after September 1, 1992.

TA-W-28,590, TA-W-28,606; Columbia Aluminum, Goldendale, WA and Portland Unloading, Portland, OR

A certification was issued covering all workers engaged in the production of aluminum and the loading and unloading of alumina separated on or after April 12, 1992.

TA-W-28,563; Moore Clark Co., Inc., Laconner, WA

A certification was issued covering all workers engaged in the production of fish feed separated on or after April 1, 1992.

TA-W-28,524; BRK Electronics, Inc., Aurora, IL

A certification was issued covering all workers engaged in the production of smoke detectors separated on or after March 24, 1992.

TA-W-28,586; Brinley Sportswear, Inc., Medford, NY

A certification was issued covering all workers engaged in the production of ladies' bathing suits separated on or after April 14, 1992.

TA-W-28,517; Tex Style, Inc., Cincinnati, OH

A certification was issued covering all workers engaged in the production of shower curtains separated on or after March 23, 1992. It was also determined that all workers engaged in the production of tier curtains are denied.

TA-W-28,472 & TA-W-28,472A; International Drilling Fluids, Houston, TX & Operations in the State of LA

A certification was issued covering all workers engaged in the production of exploration and drilling of crude oil and natural gas separated on or after March 2, 1992.

TA-W-28,618; San Ron Sportswear, Pittston, PA

A certification was issued covering all workers separated on or after April 22, 1992.

TA-W-28,434; Cliftex Co., Falls River, MA

A certification was issued covering all workers engaged in the production of men's suits and sportcoats separated on or after February 19, 1992.

TA-W-28,335; Richard & Trute Tool & Die Corp., Warren, MI

A certification was issued covering all workers separated on or after February 1, 1992.

TA-W-28,478; General Electric Co., Murfreesboro, TN

A certification was issued covering all workers separated on or after March 16, 1992.

TA-W-28,568; Plummer Precision Optics, Pennsburg, PA

A certification was issued covering all workers separated on or after April 7, 1992.

TA-W-28,698, TA-W-28,699; Braelock Holdings, Inc., Covington, LA, and Graham Energy Services, Inc., Covington, LA

A certification was issued covering all workers engaged in drilling and the production of crude oil separated on or after May 17, 1992.

TA-W-28,700, TA-W-28,701; Pontchartrain Services, Covington, LA and GRL Production Services, Houston, TX

A certification was issued covering all workers engaged in drilling and the production of crude oil separated on or after May 17, 1992.

TA-W-28,546; Osram Sylvania, Wellsboro, PA

A certification was issued covering all workers engaged in the production of commercial floor tile separated on or after March 31, 1992.

TA-W-28,604; Sallies Fashions, Pittston, PA

A certification was issued covering all workers separated on or after March 27, 1992.

TA-W-28,470; Vought Aircraft Co., Dallas, TX

A certification was issued covering all workers engaged in the production of aircraft skin panels separated on or after March 8, 1992.

TA-W-28,551; Alta Products, Williamsport, PA

A certification was issued covering all workers engaged in the production of slippers separated on or after April 12, 1992.

TA-W-28,384; Jones & Vining, Inc., Troy, MO

A certification was issued covering all workers engaged in the production of shoe lasts separated on or after December 1, 1992.

TA-W-28,608; Tri-State Optical Co., Shreveport, LA

A certification was issued covering all workers engaged in the production of eyeglasses, lenses & frames separated on or after April 20, 1992.

TA-W-28,526; Belcraft Skirts, Ridgewood, NY

A certification was issued covering all workers engaged in the production of ladies' skirts separated on or after March 26, 1992.

TA-W-28,678, TA-W-28,679; Greenhill Petroleum Corp., Houston, TX and Metairie, LA

A certification was issued covering all workers engaged in the production of exploration, drilling and production of crude oil separated on or after May 6, 1992.

TA-W-28,575; AAI/Microflite Simulation International, Binghamton, NY

A certification was issued covering all workers engaged in the production and modifying full flight simulators and flight training devices separated on or after April 1, 1992.

TA-W-28,595; Lineville Apparel Corp., Lineville, AL

A certification was issued covering all workers separated on or after April 15, 1992.

I hereby certify that the aforementioned determinations were issued during the month of June 1993. Copies of these determinations

are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 23, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-15734 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

TA-W-28, 423

Princeton Packaging, Inc., Bakery Packaging Products Division, Bloomington, IN; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 4, 1993, Local #17 of the Graphite Communication International Union (GCIU) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the Federal Register on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the subject firm produced plastic bags for bakery products—primarily bread. The subject firm was sold to the Bemis Company, a domestic firm in February, 1993.

The union claims that the Bemis Company sent machinery to its affiliate in Mexico, after its purchase of the Princeton Packaging's Bakery Products Division.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act was not met. The sale of the subject firm to another domestic firm would not provide a basis for a worker group certification.

Investigation findings show that Bemis sent two printing presses to Mexico to print on plastic tubing for laundry detergent to be sold in Mexico. Company officials indicated that the equipment is not to be used to produce bakery bags, the only product produced at Bloomington. The findings show no company imports of bakery bags by Bemis.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of June 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-15735 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-28,442]

Stanley Smith Security, Inc., Trojan Nuclear Plant, Rainier, OR, Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 1, 1993, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 10, 1993 and published in the Federal Register on May 25, 1993 (58 FR 30072).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that Stanley Smith Security is an independent firm providing security services to Portland General Electric, (PGE).

The petitioners state that the security services which they provide PGE are provided as a condition of PGE's license to operate and produce a product—electricity.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of the Trade Act, as amended. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals.

Although the services rendered may be a condition of the license to operate and produce a product, such services cannot be considered the production of an article. The worker adjustment assistance program was not intended to provide TAA to workers who are in some way related to import competition but only for those workers who produce an article and are adversely affected by increased imports of like or directly competitive articles which contributed importantly to sales or production and employment declines at the worker's firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 24th day of June 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 93-15733 Filed 7-1-93; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Lead Work Group of the Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Lead Work Group of the Advisory Committee on Construction Safety and Health (ACCSH), established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656), will meet on July 29 and 30, 1993, in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Ave., NW., Washington, DC. The meeting is open to the public and will begin at 9 a.m.

The agenda for the meeting includes a discussion of the interim final standard on lead in construction. The Lead Work Group will discuss training

requirements under the standard, recommendations on outreach programs for the standard, and interest in clarification of the language in the standard.

On May 4, 1993, OSHA issued an interim final standard, as directed by Congress, to protect more than 900,000 construction workers against lead exposure. The standard reduces the permissible exposure limit for lead in construction from 200 micrograms per cubic meter of air as an eight-hour time weighted average to an eight-hour time weighted average of 50 micrograms per cubic meter of air.

In developing the interim final standard, OSHA consulted with the Advisory Committee on Construction Safety and Health which includes representatives of labor and management in construction and the public health community, several of whom are members of the Lead Work Group. OSHA incorporated in the interim final standard modifications suggested by the work group and approved by the committee.

Written data, views, or comments may be submitted, preferably with five copies, to John Moran, ACCSH Lead Work Group leader. Any such submissions received prior to the meeting will be provided to the members of the work group and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Mr. Moran prior to the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled, as time permits, at the discretion of Mr. Moran.

For additional information contact: John Moran, Lead Work Group Leader, Laborer's Health and Safety Fund of North America (LHSFNA , 905 16th St., NW., Washington, DC 20006, telephone: (202) 628–5465, telefax: (202) 628–2613; or Tom Hall, designated federal official for the parent committee (ACCSH), OSHA Division of Consumer Affairs, room N–3647, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 219–8615, telefax: (202) 219–5986.

Disabled individuals wishing to attend should contact Tom Hall at the above address to obtain appropriate accommodations.

Signed at Washington, DC, this 28th day of June 1993.

David C. Zeigler,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 93–15736 Filed 7–1–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and § 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access Watergate-related portions of Nixon White House tapes among the Nixon Presidential historical materials.

DATES: The National Archives intends to make the Watergate-related portions of the Nixon White House tapes described in this notice available to the public beginning August 26, 1993. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before August 16, 1993.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions asserting claims of legal rights or privilege must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The National Archives is proposing to open 46 segments of Watergate-related Nixon White House tapes from 24 separate conversations recorded during August 1972. These segments total approximately 2 hours and 47 minutes of listening time.

The first opening of Nixon White House tapes, on May 28, 1980, included 12 and ½ hours of conversation used as evidence in Watergate trials. The second opening, on June 4, 1991, included 47 and ½ additional hours of conversations obtained by the Watergate Special Prosecution Force but not used in court. The third opening, on May 17, 1993, included approximately 3 additional hours of Watergate-related segments for the months of May and June 1972. The National Archives has proposed a fourth opening for July 15, 1993, including approximately 1 hour and 19 minutes of Watergate-related segments for July 1972.

The National Archives will propose additional abuse of power segments for public access on a periodic basis in monthly groupings as final review and processing are completed.

There are no transcripts for these tapes. Tape logs, prepared by the National Archives, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The sound recordings will be made available to the general public in the research room at 845 S. Pickett Street, Alexandria, Virginia, Monday through Friday between 8 a.m. and 4:30 p.m. Listening stations will be available for public use on a first come, first served basis. The National Archives reserves the right to limit listening time in response to heavy demand. No copies of the sound recordings will be sold or otherwise provided. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log entries will be available for purchase.

Public access to some portions of the White House tapes will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (PRMPA Regulations).

Dated: June 25, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–15659 Filed 7–1–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93-058)]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: July 13, 1993, 8 a.m. to 4:30 p.m.; and July 14, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: ARC Professional Services Group, suite 950, 500 E Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864-8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports
—Facility Study Office Report
—Future Task Force Plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: June 25, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-15714 Filed 7-1-93; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from the requirement of 10 CFR part 50, appendix J, paragraph III.D.2(b)(ii) to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of appendix J, paragraph III.D.2(b)(ii) of 10 CFR part 50. On December 21, 1992, the licensee requested an exemption from paragraph III.D.2(b)(ii) which requires that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required by the plant's Technical Specifications. Instead of the full pressure air lock leakage test, the licensee has proposed to conduct seal leakage testing when the reactor is in cold shutdown or refueling and maintenance has been performed on the air lock gaskets, but no maintenance has been performed that affects air lock sealing capabilities.

The Need for the Proposed Action

The proposed exemption is needed because compliance to paragraph III.D.2(b)(ii) of 10 CFR part 50, appendix J, would result in unique hardship and cost because of reduced operational flexibility and unwarranted delays in power ascension over the life of Cook Nuclear Plant. This requirement would be in excess of those incurred by other, similar facilities that have received exemptions from the subject appendix J requirement. Performance of the leakage rate tests required by paragraph III.D.2(b)(ii) takes approximately eight hours per air lock and requires installation of strongback devices on both the inner and outer doors. Due to common problems that occur following maintenance during the refueling shutdowns, it is often the case that this testing must be performed several times during the startup phase. This has in the past delayed entry into Mode 4.

Environmental Impact of the Proposed Action

The proposed exemption would allow the substitution of an air lock seal test for an air lock pressure test while the reactor is in Mode 5 (cold shutdown) or Mode 6 (refueling). The potential increase in risk to public health and safety is solely related to the potential increased probability for, and magnitude of, containment leakage during an accident that could lead to potentially greater offsite radiological consequences. The potential increase in risk due to this exemption is considered insignificant and would result only from the potential leakage path through the door operator shaft seals, which will not be measured by this substitute test. However, the six-month test requirement of appendix J paragraph III.D.2(b)(i), and the testing required when maintenance is performed on the air lock, will measure the leakage through the door operator shaft seals and provide assurance that the air lock will not leak excessively and will not affect containment integrity or increase the risk of any facility accidents. Therefore, post-accident radiological releases will not exceed previously determined values. The exemption has no impact on plant radiological or non-radiological effluents and has the potential to reduce occupational exposure by reducing the amount of time that personnel spend in a radiologically restricted area.

With regard to potential non-radiological impacts, the proposed change to the Technical Specifications involves a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement, dated August 1973, in connection with D.C. Cook, Units 1 and 2.

Agencies and Persons Consulted

The staff consulted with the State of Michigan regarding the environmental impact of the proposed action.

Finding No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated December 21, 1992. These letters

are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 24th day of June 1993.

For the Nuclear Regulatory Commission.

J. Randall Hall,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15700 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.38, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants," describes methods acceptable to the NRC staff for implementing the Commission's requirements for controlling access to high and very high radiation areas in nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 9th day of June 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–15698 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

Issuance and Availability of Draft NUREG–1477, "Voltage-Based Interim Plugging Criteria for Steam Generator Tubes—Task Group Report"

The U.S. Nuclear Regulatory Commission (NRC) staff has issued NUREG–1477, "Voltage-Based Interim Plugging Criteria for Steam Generator Tubes—Task Group Report" in draft form. Draft NUREG–1477 is being issued for information and comment. This report, when issued in final form, will serve as the technical basis for a forthcoming NRC staff generic position concerning the use of voltage-based interim plugging criteria (IPC) to address outer diameter stress corrosion cracking (ODSCC) at the tube support plate intersections.

The draft report was prepared by a special NRC Task Group that was established to review the technical basis for voltage-based plugging criteria applied to ODSCC of steam generator tubes. The charter of the Task Group was to review the technical bases for and outstanding issues related to interim approval of voltage-based plugging criteria that had been approved for application to ODSCC and to prepare conclusions and recommendations concerning implementation of these criteria. Most of these issues are also relevant to the long-term approval of voltage-based plugging criteria. The Task Group was composed of NRC staff from the Office of Nuclear Reactor Regulation and the Office of Nuclear Regulatory Research. Expert consultants from NRC contractors also assisted in the Task Group's evaluations. The Task Group reviewed and evaluated tube integrity-related issues, including the potential for tube rupture or leakage under postulated accident conditions, and the related safety implications. The Task Group activities included an assessment of outstanding technical issues and concerns that had been raised by Industry, the Public, and NRC staff regarding voltage-based plugging criteria for ODSCC. Tube integrity-related issues that were reviewed and assessed include: (1) The understanding of the ODSCC mechanism, (2) methods for evaluating margins against tube rupture and estimating potential primary-to-secondary leakage, (3) operational primary-to-secondary leakage limits, and (4) inservice inspection methods and scope. The assessment of methods for evaluating margins against tube rupture and estimating potential primary-to-secondary leakage was particularly important. This assessment included evaluation of an NRC-developed model and an industry-developed model. The NRC model uses traditional mechanics-based approaches for assessing tube integrity, while the industry model uses an empirical approach based on the voltage amplitude of eddy current measurements. Analyses performed using these two models had predicted significantly different primary-to-secondary leakage rates under postulated accident conditions. Understanding and resolving this difference was important in order to assess the potential safety implications with regard to offsite radiological doses and core integrity.

In the area of safety assessment, the Task Group performed calculations to assess the radiological doses and the potential for core damage associated with a range of assumed primary-to secondary leakage rates. The Task Group also performed a risk assessment to provide further insights to the safety significance of ODSCC for steam generator tubes.

The draft report documents the results of the Task Group's effort including its conclusions and recommendations with respect to implementation of voltage-based IPCs. These conclusions and recommendations are preliminary and predecisional. The NRC staff will consider all public comments received pertaining to the draft report, and will revise the draft report as appropriate. The revised document will be reviewed by the Director of the Office of Nuclear Reactor Regulation, the Director of the Office of Nuclear Regulatory Research, and the NRC Committee for the Review of Generic Requirements (CRGR) prior to its issuance in final form. When issued in final form, this report will serve as the technical basis for a forthcoming NRC staff generic position concerning the use of voltage-based IPCs to address ODSCC at the tube-to-tube support plate intersections. The forthcoming NRC staff generic position will be subject to the appropriate procedures necessary to issue such a position.

The staff and the Commission are seeking comments from the public on this document before the final position document is issued. The staff recognizes

the benefits that can be achieved by public review and comment, especially when the comments are accompanied by supporting data. The staff will evaluate the comments received and address them, as appropriate, in the final NUREG–1477 when it is published.

A free single copy of draft NUREG–1477 may be requested by those considering public comment by writing to the Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington DC.

Written comments on draft NUREG–1477 may be submitted by mail to the Rules and Review Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be hand delivered to 7920 Norfolk Avenue, Bethesda, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal Comments should be received within 45 days of the date of issuance of this notice The comment period expires August 16, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given for comments received after this date. For further information contact Mr. Timothy A. Reed, Project Directorate II–1, Division of Reactor Projects, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1463.

Dated at Rockville, Maryland this 10th day of June 1993.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate II–1, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15697 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.54(y) for Facility Operating License No. DPR–13, a possession-only license (POL) held by the Southern California Edison Company (the licensee). The exemption would apply to the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1), a permanently shutdown plant located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow exemption from the requirements of 10 CFR 50.44(y) in response to the licensee request dated February 8, 1993. This exemption would allow certified fuel handlers, rather than senior reactor operators, to take emergency actions as necessary to protect the public health and safety.

Permanent shut downs of SONGS 1 occurred on November 30, 1992, and defueling of the SONGS 1 reactor was completed by the licensee in March 1993. The license amendment converting the SONGS 1 license to POL status was issued on October 23, 1992, and the POL became effective on March 9, 1993. On May 27, 1993, the NRC issued a license amendment which eliminated Technical Specification (TS) requirements to use 10 CFR part 55 licensed reactor operators and senior operators. As authorized by the May 27, 1993 amendment, the licensee has established the Certified Fuel Handler position as the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility.

Need for the Proposed Action

The underlying purpose of 10 CFR 50.54(x) is to permit plant personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated. However, for SONGS 1, these emergency actions would not be permitted by 10 CFR 50.54(y) due to the absence of licensed senior operators following implementation of the approved Certified Fuel Handler Technical Specification change. Thus, the licensee has requested an exemption from 10 CFR 50.54(y) to allow these potential emergency actions to be authorized by Certified Fuel Handlers at SONGS–1.

Environmental Impact of the Proposed Action

There are no environmental impacts of the proposed action. The proposed exemption is an administrative change by which the licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permitted by 10 CFR 50.54(x) be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. Since the proposed exemption does not otherwise affect radiological plant effluents or cause any significant occupational exposures, the Commission concludes that there are no radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Assessment related to the conversion of the Provisional Operating License to a Full Term Operating License issued to Southern California Edison Company for SONGS 1 on September 16, 1991.

Agencies and Persons Consulted

The NRC staff consulted with the State of California regarding the environmental impact of the proposed action. The State representative had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated February 8, 1993, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the

Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 25th day of June 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15699 Filed 7–1–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Termination of the Benefit Program Under Title V of the Regional Rail Reorganization Act of 1973, as Amended by the Northeast Rail Service Act of 1981

Pursuant to 31 U.S.C. 1555, the Railroad Retirement Board has determined that the purposes for which this appropriation was made have been fulfilled, that no further obligations will be incurred against this appropriation, and the unobligated balance of $456,108.23 for the payment of benefits under title V of the Regional Rail Reorganization Act of 1973, as amended by the Northeast Rail Service Act of 1981, will be transferred to the Department of Transportation for withdrawal and redeposit to the general fund of the Department of the Treasury.

Dated: June 24, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–15654 Filed 7–1–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 33–7003; 34–32530]

Changes and Corrections to EDGAR Phase-In List

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Commission is publishing a list of changes and corrections to the EDGAR phase-in list for companies with filings processed by the Division of Corporation Finance.

FOR FURTHER INFORMATION CONTACT: Sylvia J. Reis, Assistant Director, CF EDGAR Policy, Division of Corporation Finance at (202) 272–3691.

SUPPLEMENTARY INFORMATION: In connection with the adoption of interim rules to implement the operational phase of the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, on March 18, 1993 the Commission published a list of companies whose filings are processed by the Division of Corporation Finance to place registrants on notice as to when they would become subject to mandated electronic filing.[1] The registrants were divided into ten groups to be phased in over the next three years. Rule 901 of Regulation S–T[2] provides that registrants may request a change to their assigned phase-in dates. Such requests may be granted pursuant to delegated authority. In addition, corrections to the published list may be necessary. Changes to the Division of Corporation Finance phase-in list are published from time to time in the SEC News Digest. The Commission today is publishing a comprehensive list of all changes in Division of Corporation Finance phase-in group assignments made since the list was published on March 18, 1993; this procedure will be repeated from time to time, in order to further notify the public of changes to the list. A change to a company's phase-in date is of particular importance to persons or entities filing documents with respect to that company, since generally such persons must file electronically when the company becomes subject to electronic filing.[3]

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 33–6977 (FEBRUARY 23, 1993)

Company name	CIK No.	Former group	New group
Ambase Corp	020639	CF–02	CF–09
American Express Co	004962	CF–02	CF–03
Ames Department Stores, Inc	006071	CF–02	CF–03
Arkansas Power & Light Co	007323	CF–02	CF–01
AT&T Capital Corp	861940	CF–01	CF–01
change to AT&T Capital Corp	897708	CF–01	CF–01
Bowater, Inc	743368	CF–02	CF–04
Cambridge Electric Light Co	016573	CF–09	CF–02
Canal Electric Co	016906	CF–03	CF–02
Cell Technology Inc /DE/	816159	CF–06	CF–06
change to Air Methods Corp	816159	CF–06	CF–06
CIPSCO, Inc	860520	CF–01	CF–02
Clinical Technologies Associates, Inc	805326	CF–08	CF–08
change to Emisphere Technologies, Inc	805326	CF–08	CF–08
Commonwealth Electric Co	071222	CF–09	CF–02
Commonwealth Gas Co	022620	CF–04	CF–02
CS Primo Corp	792157	CF–09	CF–09
change to Dynasty Travel Group, Inc	792157	CF–09	CF–09
Duracell Holdings Corp	873482	CF–10	CF–10
change to Duracell International, Inc	873482	CF–10	CF–10

[1] See Release No. 33–6977 (February 23, 1993), published on March 18, 1993 at 58 FR 14628. The timing for each phase-in group was included in that release as Appendix A, and the phase-in list as Appendix B. As is true with all rules promulgated by the Commission, persons making filings with the Commission are responsible for apprising themselves of their new obligations associated with filing on the EDGAR system. While the Commission attempts to contact registrants in each phase-in group by furnishing a copy of the EDGAR Filer Manual and EDGARLink software prior to phase-in, filers will not be relieved of their electronic filing obligations in the absence of such notification.

[2] 17 CFR § 232.901.

[3] Rule 901(b) provides that a party making a filing pursuant to Section 13 or 14 of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78n, respectively] with respect to a registrant that has become subject to mandated electronic filing is required to submit that filing in electronic format. Consequently, persons filing a Schedule 13D or 13G, a proxy statement, or tender offer material with respect to an electronic filer are required to make such filings electronically.

CHANGES FROM CORPORATION FINANCE EDGAR PHASE-IN LIST AS PUBLISHED IN SECURITIES ACT RELEASE NO. 33-6977 (FEBRUARY 23, 1993)—Continued

Company name	CIK No.	Former group	New group
Entergy Corp	065984	CF-02	CF-01
First National Financial Corp	779575	CF-03	CF-04
Future Medical Products Inc /NY/	839087	CF-08	CF-03
Grace Energy Corp	852551	CF-03	Remove
Great Atlantic & Pacific Tea Co, Inc	043300	CF-02	CF-03
Greyhound Dial Corp /AZ/	734716	CF-02	CF-02
change to Dial Corp /AZ/	734716	CF-02	CF-02
Hadson Europe, Inc	350091	CF-07	CF-07
change to Midwest Energy Companies, Inc	350091	CF-07	CF-07
IMRS, Inc	878594	CF-02	CF-03
Jorgensen Earle M Co /DE/	054003	CF-04	CF-09
Levi Strauss Associates, Inc	778977	CF-02	CF-03
Louisiana Power & Light Co /LA/	060527	CF-02	CF-01
Marrow Tech, Inc	829549	CF-07	CF-07
change to Advanced Tissue Sciences Inc	829549	CF-07	CF-07
McDermott, Inc	225615	CF-07	CF-02
Mississippi Power & Light Co	066901	CF-02	CF-01
MNC Financial, Inc /MD/	062973	CF-02	CF-04
National Gypsum Co	070174	CF-02	CF-09
New Orleans Public Service, Inc	071508	CF-03	CF-01
Nordstrom Credit, Inc	757439	CF-08	CF-02
North American Vaccine, Inc	856573	NONE	CF-10
North Shore Gas Co /IL/	110101	CF-08	CF-02
NVR LP	792972	CF-02	CF-09
Playtex Beauty Care, Inc	817217	CF-03	CF-09
Playtex FP Group, Inc	842699	CF-10	CF-09
Playtex International Corp	880821	CF-10	CF-09
Playtex Investment Corp	880820	CF-10	CF-09
Premier Bancorp, Inc	761332	CF-03	CF-09
Primark Corp	356064	CF-04	CF-09
Prospect Group, Inc	739169	CF-02	CF-09
Realmark Property Investors LP I	312982	CF-07	CF-06
Realmark Property Investors LP II	704165	CF-07	CF-06
Realmark Property Investors LP VI B	822784	CF-08	CF-06
Reliance Financial Services Corp	083047	CF-04	CF-03
Reliance Group Holdings, Inc	356395	CF-02	CF-03
Rockwell International Corp	084636	CF-02	CF-01
Ryder System, Inc	085961	CF-02	CF-03
Sahara Resorts	704435	CF-01	CF-04
Shearson Lehman Brothers Holdings, Inc	806085	CF-02	CF-03
Shearson Lehman Brothers, Inc	728586	CF-02	CF-03
System Energy Resources, Inc	202584	CF-02	CF-01
Texaco Capital, Inc	708490	CF-10	CF-02
Transam Capital Corp	851943	CF-10	CF-10
change to Pacific Animated Imaging Corp	851943	CF-10	CF-10
Transco Energy Co	099231	NONE	CF-02
Unicorp American Corp/DE/NEW/	202172	CF-02	CF-05
change to Lincorp Holdings, Inc	202172	CF-02	CF-05
Total Number of Companies:	58	.....	

Dated: June 28, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-15695 Filed 7-1-93; 8:45 am]

BILLING CODE 8010-01-P

[Release No. 34-32516; File No. SR-NASD-93-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Filling of Vacancies on NASD Nominating Committees

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] In a *Notice to Members* (June 1993), the NASD invited is members to vote on this proposed rule change. Following the last voting day on July 26, 1993, the NASD will submit the results of the voting to the Commission. Final Commission approval will not occur until the results of the vote are received.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article IX, Section 4 of the NASD By-Laws to conform the procedures for filling vacancies on Nominating Committees to those currently in place for District Committees. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Article IX

* * * * *

Filling of Vacancies for Nominating Committees

Sec. 4 [All vacancies in any Nominating Committee other than those caused by the expiration of a member's term of office shall be filled as follows:]

[(a) If the unexpired term of the member causing the vacancy is for less than six months, such vacancy shall be filled by appointment by the remaining members of the Nominating Committee of a representative of a member of the Corporation eligible to vote in the same District.]

[(b) If the unexpired term of the member causing the vacancy is for six months or more, such vacancy shall be filled by election, which shall be conducted as nearly as practicable in accordance with the provisions of Section 3 of this Article.]

In the event of any vacancy on any Nominating Committee caused by the departure of a Committee member prior to the expiration of that member's term of office the Nominating Committee shall appoint a representative of a member of the Corporation eligible to vote in the same District to fill the vacancy. Such appointment shall be effective until the next regularly scheduled election occurs, in accordance with the provisions of Section 3 of this Article.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's By-Laws currently provide for different procedures to be used to fill vacancies on the District Nominating Committees and on the District Committees themselves. Article IX, Section 4 of the By-Laws provides that Nominating Committee vacancies caused by other than the expiration of a member's term of office shall be filled by appointment by the remaining members of the Nominating Committee if the unexpired term is for less than six months, but that if the unexpired term is for six months or more, such vacancy shall be filled by special election. Article VIII, Section 5 of the By-Laws relating to the filling of vacancies on the District Committees, however, provides that the District Committee shall appoint a representative of a member firm having a place of business in the District to fill any vacancy resulting from the unexpired term of a departed committee member and that such appointment shall be effective until the next regularly scheduled election occurs.

The NASD believes that this special election provision for Nominating Committee vacancies serves no valid purpose and is a costly and cumbersome mechanism, particularly in view of the fact that the term of Nominating Committee members is only one year. Accordingly, the NASD is proposing to amend Article IX, Section 4 of the By-Laws to provide for the same procedures to be used in filling Nominating Committee vacancies as are used to fill District Committee vacancies. The proposed rule change provides that any Nominating Committee shall appoint a representative of a member of the NASD eligible to vote in the same District to fill a vacancy until the next regularly scheduled election.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(4) and (5) of the Act in that it assures fair representation of the NASD's members by making it easier and less costly for the NASD to fill vacancies on any of its Nominating Committees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–93–34 and should be submitted July 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15730 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34-32515; File No. SR-CBOE-93-27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Monthly Subscriber Fees for Use of Exchange Installed Telephones

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 10, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish a subscriber fee in the amount of $5.00 per month to be imposed on members who are approved to use Exchange installed telephones in the Exchange's equity options trading crowds. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish monthly subscriber fees to be imposed upon members who are approved to use Exchange installed telephones located in the equity options trading crowds on the Exchange floor.[1] This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges amount its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-27 and should be submitted by July 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15689 Filed 7-1-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Exchange Rule 2.22 establishes fees for members who are approved to use Exchange installed telephones located on the equity options trading floor, or who are approved to install their own telephones on the equity options trading floor. *See* Securities Exchange Act Release No. 32463 (June 15, 1993), 58 FR 33850. The CBOE has submitted a proposed rule change to incorporate Exchange policies governing the use of such telephones located at equity option trading posts on the floor of the Exchange. *See* File No. SR-CBOE-93-24.

[2] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-32529; File No. SR-DGOC-93-01]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Relating to the Definition of Exercise Price

June 28, 1993.

On April 6, 1993, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR-DGOC-93-01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 12, 1993, to solicit comments from interested persons.[2] By letter filed with the Commission on April 12, 1993, DGOC made nonsubstantive, stylistic modifications to the proposal.[3] No comments were received. This order approves the proposal as amended.

I. Description of the Proposal

The proposed rule change amends the definition of exercise price in Article I of DGOC's *Procedures* to provide that each exercise price shall be stated in whole numbers and sixty-fourths (or fractions reduced from sixty-fourths) or in other gradations or in such other manner that will conform with the then current practice for the expression of prices of Treasury Bills, Notes, or Bonds

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32263 (May 4, 1993), 58 FR 28076.

[3] Letter from David J. Maloy, President, DGOC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (April 6, 1993).

among primary dealers of U.S. Government Securities.

The proposed rule change responds to Participants' requests for finer gradations in exercise prices for options on U.S. Treasury securities. DGOC states that with respect to options that are due to expire shortly and/or that have underlying securities that are near maturity, and during periods of low volatility in the prices of options, small incremental changes in exercise prices become more significant in the decision to buy or sell an option. The proposal authorizes DGOC to clear options on U.S. Treasury securities with exercise prices stated in gradations of sixty-fourths of a dollar in place of the current exercise price gradations of sixteenths of a dollar.

As a result, the proposed amendment to the definition of exercise price affords DGOC Participants additional flexibility in choosing DGOC cleared options with exercise prices that match more precisely their overall U.S. Treasury securities portfolios. The proposal enables Participants to submit to DGOC for processing trades in options on U.S. Treasury securities that previously could not be submitted to DGOC because the exercise prices of those options were not available at DGOC.

The amended definition of exercise price also gives DGOC the ability to process options with exercise prices stated not only in sixty-fourths but also stated in other gradations or in other manners that conform with the then current practice for the expression of prices of U.S. Treasury Bills, Notes, or Bonds among primary dealers of U.S. Government Securities. This should enable DGOC to provide uninterrupted clearing and settlement services to its Participants should there be a change in the manner in which prices of Treasury Securities are expressed in the U.S. Government Securities market.[4]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[5] Section 17A(a)(1) of the Act[6] encourages the use of efficient, effective, and safe procedures for the clearance and settlement of securities transactions. Moreover, sections 17A(b)(3)(A) and (F) of the Act[7] require that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

This proposed rule change is essentially a technical amendment that permits DGOC to set exercise prices on options on U.S. Treasury securities in finer gradations in connection with its trade processing. The proposed rule change responds to requests by DGOC's Participants who have noted that additional price gradations are necessary in the U.S. Treasury securities options market, especially at times of low volatility in the prices of options and when an option is near expiration or its underlying security is near maturity. At such times, options often trade in narrow increments within a narrow range. Moreover, the revised definition of exercise price should allow DGOC Participants to select options that more closely match the prices in their overall U.S. Treasury securities portfolios.

As a general matter, the Commission believes that DGOC's proposal for finer gradations of exercise prices for options on U.S. Treasury securities will benefit the Government securities market. The proposal allows for the automated clearance and settlement through the DGOC system of securities transactions that otherwise would be conducted in the over-the-counter market and would be cleared through a decentralized and less efficient process outside the national system for the clearance and settlement of securities transactions. The ability to use DGOC's clearance and settlement system for more transactions in options on U.S. Treasury securities should provide DGOC's Participants with greater flexibility in the marketplace, should add a degree of efficiency and safety to the market, and should further the establishment of a national system for the clearance and settlement of securities transactions.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the above-mentioned proposed rule change (File No. SR–DGOC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15690 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32518; File No. SR–DTC–93–05]

Self-Regulatory Organizations; The Depository Trust Co.; Filing and Immediate Effectiveness of a Proposed Rule Change Regarding the Memo Segregation Service

June 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–93–05) as described in Items I, II, and III below, which items have been prepared in part by DTC, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to DTC's memo segregation service ("Memo Seg").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC developed Memo Seg to assist participants in their compliance with Rule 15c3–3 under the Act, which requires, among other things, that broker-dealers maintain control of all

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[4] Should there be a change in the manner in which prices of Treasury Securities are expressed in the U.S. Government Securities market that necessitates DGOC to process options on U.S. Treasury securities with exercise prices stated in a manner other that in sixty-fourths, DGOC will notify the Commission in writing of such change.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78q–1(a)(1) (1988).

[7] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[8] 15 U.S.C. 78s(b) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1989).

fully-paid or excess margin securities they hold for the accounts of customers.[2] Memo Seg enables a participant, particularly a broker-dealer participant, to segregate customer fully-paid and excess margin securities by creating a "memo" position within its free account. This memo position enables a participant to protect itself from unintended delivery of a designated quantity of customer fully-paid or excess margin securities that either are in the participant's free account or that may be received during the daily processing cycle.[3] DTC has been operating Memo Seg since August 1988, initially under the terms of a temporary order.[4]

Under the rule proposal, when a DTC participant receives a deliver order ("DO") submitted with Reason Code 40 (indicating transfer of a customer account), DTC increases both the free account position and the memo segregation position of the participant. Prior to this rule change, a participant had to submit an instruction to DTC to increase the memo segregation position after receiving a DO with Reason Code 40.

Also under the rule proposal, when a participant receives a DO with Reason Code 30 (indicating a delivery against payment) or Reason Code 10 (indicating a stock loan) and the participant has a memo segregation position greater than its free account position, DTC will allow the DO received to release any pending deliveries up to the quantity of securities in the DO received despite the memo segregation position. If the participant does not have any pending deliveries at the time when a DO with Reason Code 30 or Reason Code 10 is received, DTC will retain throughout that day's processing cycle a notation of the quantity of securities in the DO received and will process any deliveries later submitted by the participant up to that quantity despite the memo segregation position. Prior to this rule proposal, a participant had to submit an instruction to DTC to reduce the memo segregation position in order to deliver securities received that day by a DO with Reason Code 30 or Reason Code 10.

DTC states that these enhancement to Memo Seg will be available by July 30, 1993.

[2] 17 CFR 240.15c3-3 (1991).

[3] For a detailed description of Memo Seg, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45638 [File No. SR-DTC-88-16] (order approving DTC's proposed Memo Seg procedures).

[4] Securities Exchange Act Release No. 26000 (August 16, 1988), 53 FR 31947 [File No. SR-DTC-88-16].

Because the proposed rule change will facilitate compliance with the provisions of the Act and the rules and regulations thereunder, it is consistent with the Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC developed the proposed rule change as a result of discussions with the Securities Operations Division of the Securities Industry Association. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b-4 thereunder.[6] The proposed rule change effects changes in an existing service of DTC that (i) do not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) do not significantly affect the respective rights or obligations of DTC or persons using the services.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-93-05 and should be submitted by July 23, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15666 Filed 7-1-93; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A) (1989).

[6] 17 CFR 240.19b-4(e) (1991).

[Release No. 34-32528; File Nos. SR-OCC-93-12 and SR-ICC-93-5]

Self-Regulatory Organizations; The Options Clearing Corp. and The Intermarket Clearing Corp.; Filing of Proposed Rule Changes Relating to Cross-Margining with the Commodity Clearing Corp.

June 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 24, 1993, The Options Clearing Corporation ("OCC") and the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would establish cross-margining programs among and between OCC, ICC, and the Commodity Clearing Corporation ("CCC").[2]

[7] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] CCC acts as the clearing organization for futures contracts and options on futures contracts for which FINEX, Inc., a division of the New York Cotton Exchange, has been designated as a contract market by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filing with the Commission, OCC and ICC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of these proposed rule changes is to provide for cross-margining programs among OCC, ICC, and CCC ("trilateral" cross-margining) and for cross-margining programs between OCC and ICC, between OCC and CCC, and between ICC and CCC ("bilateral" cross-margining). The trilateral and bilateral programs will include both proprietary and non-proprietary cross-margining and will be established by a Cross-Margining Agreement ("Agreement") among OCC, ICC and CCC.

The Agreement to be executed by OCC, ICC, and CCC is substantially similar to the Cross-Margining Agreement among OCC, ICC, and the Chicago Mercantile Exchange ("CME").[3] except for the differences described below.

First, as OCC, ICC, and CCC will not make any settlements on Good Friday, that day is not defined as a Business Day for purposes of section 7 of the Agreement.

Second, the parties have determined that it is unnecessary to provide that oral agreements must be made over a recorded telephone line and later confirmed in writing. Accordingly, all references relating to the use of recorded telephone lines in making oral agreements and to confirming such agreements in writing have been deleted from the Agreement. Such references are most notable in section 5, 6, 7, and 14 of the OCC/ICC/CME Cross-Margining Agreement.

Third, certain times reflected in the Agreement, most notably in section 7, have been drafted to accommodate OCC's settlement times.

Fourth, provisions of section 8 relating to the suspension of a Clearing Member or pair of Affiliated Clearing Members and the liquidation of X–M Accounts have been revised to accommodate the inclusion of the restructured OCC/ICC cross-margining program.[4] The basic formula for the sharing of any surplus or shortfall among or between OCC, ICC, and CCC, however, is the same as among and between OCC, ICC, and CME in their cross-margining programs.

Fifth, the list of contracts eligible for cross-margining is set forth in Exhibit A to the Agreement and is tailored for the programs among and between OCC, ICC, and CCC. Eligible OCC-cleared contracts will include put and call options on broad-based stock indices and on foreign currencies. Eligible ICC-cleared contracts will include futures contracts on the New York Stock Exchange Composite Index, put and call options on the New York Stock Exchange Composite Index futures, foreign currency futures, and put and call options on foreign currency futures. Eligible CCC-cleared contracts will include futures on the U.S. Dollar Index ("USDX") and put and call options on the USDX futures.

The forms of account agreements and subordination agreements are substantially identical to those used in the cross-margining programs among and between OCC, ICC, and CME.[5]

OCC and ICC believe the proposed rule changes are consistent with the purposes and requirements of section 17A of the Act,[6] as amended, because they expand the implementation of cross-margining to another significant group of market participants and thereby further enhance the safety of the clearing system while providing lower margin costs to participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC and ICC do not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(a) By order approve the proposed rule changes or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of OCC and ICC. All submissions should refer to the File Nos. SR–OCC–93–12 and SR–ICC–93–05 and should be submitted by July 23, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15694 Filed 7–1–93; 8:45 am]

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[3] The Cross-Margining Agreement among OCC, ICC, and CME is set forth in Amendment No. 2 to File Nos. SR–OCC–92–28 and SR–ICC–92–5.

[4] For a discussion of the restructured OCC/ICC cross-margining program, refer to File Nos. SR–OCC–93–07 and SR–ICC–93–04.

[5] The account agreements and subordination agreements used in the OCC/ICC/CME cross-margining program are included in Amendment No. 2 to File Nos. SR–OCC–92–28 and SR–ICC–92–5.

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Blackrock Broad Investment Grade 2009 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10883)
Brock Exploration Corporation
Common Stock, $.10 Par Value (File No. 7–10884)
Burlington Resources Coal Seam Gas Royalty Trust
Common Stock, Trust Units (File No. 7–10885)
Nuveen Pennsylvania Premium Income Municipal Fund III
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10886)
Nuveen California Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10887)
Nuveen Florida Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10888)
Nuveen New Jersey Premium Income Municipal Fund III
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10889)
Nuveen New York Premium Income Municipal Fund
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10890)
Patriot Preferred Dividend Fund
Common Stock, No Par Value (File No. 7–10891)
Putnam Managed High Yield Trust
Common Shares of Beneficial Interest, No Par Value (File No. 7–10892)
Rauch Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–10893)
Roadmaster Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–10894)
Sonat Offshore Drilling, Inc.
Common Stock, $.01 Par Value (File No. 7–10895)
Thornburg Mortgage Asset Corporation
Common Stock, $.01 Par Value (File No. 7–10896)
Van Kampen Merritt New Jersey Value Municipal Income Trust
Common Shares of Beneficial, $.01 Par Value (File No. 7–10897)
Van Kampen Merritt Massachusetts Value Municipal Income Trust
Common shares of Beneficial Interest, $.01 Par Value (File No. 7–10898)
Van Kampen Merritt Ohio Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10899)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for a hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15663 Filed 7–1–93; 8:45 am]

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[Release No. 34–3527; File No. SR–MBS 92–04]

Self-Regulatory Organizations, MBS Clearing Corp. Order Approving Proposed Rule Change Relating to the Limitation or Elimination of a Director's Liability in Certain Instances

June 28, 1993.

On August 12, 1992, the MBS Clearing Corporation ("MBS") filed a proposed rule change (File No. SR–MBS–92–04) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 1, 1992.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The rule change amends the eighth paragraph of the MBS Certificate of Incorporation and Article 6, Section 6. 1 of the By-Laws, by adding the following paragraph to both the Certificate of Incorporation and the By-Laws:

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

The rule change limits the personal monetary liability of MBS directors to the fullest extent possible under section 102(b)(7) of the General Corporation Law of the State of Delaware,[3] MBS' state of incorporation, except that violations of the Federal securities laws would be excluded from the liability limitation. Section 102(b)(7) allows Delaware corporations to adopt provisions in their Certificates of Incorporation eliminating or limiting the personal monetary liability of directors under certain circumstances.

The amendment does not eliminate a director's duty of care, and directors continue to have a duty to exercise informed business judgment in discharging their duties. Under the amendment, however, the personal liability of MBS' directors to MBS and to its shareholders will be limited if they should fail, through negligence or gross negligence, to satisfy this duty.[4] Nevertheless, under Delaware law such limitations of directors' liability would not apply in the following circumstances: (1) Breach of the director's duty of loyalty to MBS or its shareholders *i.e.*, the responsibility to conduct business in good faith and in the honest that the action taken is in the best interest of MBS;[5] (2) acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law; (3) unlawful payment of dividends or unlawful purchase or redemption of stock; and (4) transactions from which a director derives improper personal benefit.

The amendment makes clear that the limitation of directors' liability will not

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31492 (November 19, 1992, 57 FR 56939.

[3] 4 *Delaware Code Annotated*, title 8, Sec. 102(b)(7), at 557–558 (Michie, 1991).

[4] Pursuant to their fiduciary duty of care, directors must act on an informed basis, in good faith, and in honest belief that action taken is in the best interests of the company. *See Grobow* v. *Perot*, 539 A.2d 180 (Del. 1988).

[5] Pursuant to their duty of loyalty, directors must act in good faith without self-interest. *See Cede & Co.* v. *Technicolor, Inc.*, 542 A.2d 1188 (Del. 1988).

limit or eliminate an MBS director's liability under the Federal securities laws. The amendment does not limit or eliminate other equitable legal remedies, such as rescission or injunctive actions, and does not apply to the liability of a director for acts or omissions that may have occurred prior to the approval of the amendment.[6] In addition, the amendment does not apply to the liability of MBS officers for actions taken in their capacity as officers, even if such officers are also directors.

MBS stated that the amendment is a necessary measure to help ensure its ability to recruit and retain competent directors. In addition, MBS stated that due to the increased numbers and magnitude of lawsuits against directors, many other Delaware corporations, including some that are registered with the Commission under the Act, already have adopted similar provisions.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[7] Specifically, the proposal, which excludes violations of the Federal securities laws from its liability limitations, is not designed to affect adversely MBS directors' compliance with the Federal securities laws.

Section 17A of the Act[8] and Division of Market Regulation standards interpreting section 17A[9] require clearing agencies to be organized and have the capacity to comply with the Act and the rules and regulations thereunder. Accordingly, clearing agency directors must exercise their duties consistent with the Act and clearing agency rules must be designed to promote such compliance. Directors also have a duty to promote clearing agency and clearing member compliance with clearing agency rules.[10] Clearing agency directors exercising their duties in a manner inconsistent with the Act and clearing agency rules may be subject to Commission sanction. Under section 19(h)(4) of the Act[11] the Commission may remove from office or censure any clearing agency director who has: (1) Willfully violated any provision of the Act; (2) willfully violated any rules or regulations under the Act; (3) willfully violated clearing agency rules; (4) willfully abused his authority; or (5) without reasonable justification, failed to enforce compliance with clearing agency rules by any clearing agency member. Congress directed the Commission to use this authority to ensure that clearing agencies do not exercise their delegated power "in a manner inimical to the public interest or unfair to private interests."[12]

To facilitate compliance with the Federal securities laws by clearing agency directors, clearing agencies generally must have an audit committee which either selects, or makes a recommendation to the board of directors regarding the selection of, the clearing agency's independent public accountant.[13] The audit committee must include non-management directors who "review the nature and scope of the work performed by the independent public accountant and results thereof."[14]

The Commission believes that MBS's proposal is consistent with the Act. The proposal should enable MBS to recruit and retain competent directors while excluding violations of the Federal securities laws from the liability limitation.[15] The proposal also would not affect the Commission's authority to remove from office or censure a director under section 19(h)(4) of the Act for reasons enumerated in that section.

III. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular the requirements of section 17A of the Act.[16]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[17] that the above-mentioned proposed rule change (File No. SR–MBS–92–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15693 Filed 7–1–93; 8:45 am]

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[6] Under section 102(b)(7), a corporate provision limiting director liability must receive shareholder approval prior to effectiveness.

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1 (1988).

[9] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

[10] *See* section 19(g) of the Act, 15 U.S.C. 78s(g) (1988).

[11] 15 U.S.C. 78s(h)(4) (1988).

[12] *See* Securities Acts Amendments of 1975: Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong. 1st Sess. 185 (1975).

[13] *See* Standards Release, *supra* note 9.

[14] *Id.*

[15] The Commission has previously approved similar proposals by other self-regulatory organizations. *See, e.g.*, Securities Exchange Act Release No. 27446 (November 16, 1989), 54 FR 48707 (File No. SR–MCC–89–02).

[16] 15 U.S.C. 78q–1 (1988).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32517; File No. SR–NASD–93–01]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Relating to Trade Reporting for Convertible Debt Securities

June 25, 1993.

I. Introduction

The National Association of Securities Dealers ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change[1] on January 4, 1993, pursuant to section 19(b)(1)[2] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposed rule change would require members to report to the NASD information about transactions in convertible debt securities that are eligible for trading on Nasdaq, the content and timing of which would be similar to current requirements for reporting Nasdaq equity securities. In particular, members will be required to report all transactions in convertible debt securities within 90 seconds after execution to the NASD for surveillance purposes.[3] Transactions of 99 bonds or less will be disseminated to the public on a real-time basis.[4] End of day volume and price changes will include transactions publicly disclosed during the trading day.

Notice of the filing of this proposal appeared in the Federal Register on February 16, 1993.[5] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background

In June 1992, the NASD implemented transaction reporting requirements for Nasdaq Small-Cap securities, similar to the requirements in place for Nasdaq National Market System securities ("Nasdaq/NMS").[6] Currently, however, the NASD relies on end-of-day volume statistics as the primary source of surveillance information for trades in convertible debt securities.

[1] File No. SR–NASD–93–01.

[2] 15 U.S.C. 78s(b)(1).

[3] The surveillance function of this proposal is expected to be implemented in December, 1993.

[4] The public dissemination function of this proposal is expected to be implemented during the summer of 1994.

[5] *See* Securities Exchange Act Release No. 31838 (February 9, 1993, 58 FR 8640.

[6] *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

III. Description

The NASD is proposing a new Part XV to Schedule D to the By-Laws to require real-time trade reporting for convertible bonds on Nasdaq. Specifically, the NASD is proposing to require members to report all transactions in convertible debt securities for surveillance purposes within 90 seconds after execution, utilizing the same reporting protocols as are used with Nasdaq equity securities.[7] The new rule also provide that only those transactions equalling 99 bonds or less ("odd-lot") will be disseminated to the public on a real-time basis. The NASD is simultaneously eliminating the requirement for end-of-day volume reporting by market makers in convertible debt securities.

IV. Discussion

The Commission has determined that the NASD's proposal is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

Trade reporting of Nasdaq convertible debt issues will enhance the information available to the public and provide investors with instant, up-to-the-minute information on the securities traded in this segment of the Nasdaq market.[8] Trade reporting also will greatly enhance the NASD's ability to detect or deter manipulative or abusive trading practices. Trade reporting of all Nasdaq securities increases the availability of information to investors and issuers and permits immediate collection and scrutiny of transactional data for regulatory purposes.

A. Real-Time Dissemination of Retail or "Odd Lot" Transactions

1. Real-Time Trade Reporting

Transaction reporting is a fundamental component of a national marketplace that facilitates several important functions: reporting enhances transparency for investors and issuers, permits immediate collection and scrutiny of trading information for regulatory purposes, and permits the compilation of historical price and volume data for analysis and research. As experience shows from Nasdaq/NMS and Nasdaq Small-Cap securities, capturing trade-by-trade data is fundamental to ensuring regulatory and self-regulatory oversight of the markets. Moreover, transparency, in the form of last sale and quotation information provides several important benefits to the market.

The Commission believes that moving from the current limited end-of-day summary price and volume information and toward real-time dissemination is a positive step in bringing the debt market on a par with the equity market. Realtime transaction reporting will increase the NASD's ability to conduct surveillance of trading as it occurs. For example, as real-time trade reporting is fully implemented, the trading data will be available on the NASD's equity audit trail, which integrates last sale and inside quotation data for reported securities. Historically, the Commission has stated that transparency, in the form of last sale and quotation information provides several important benefits to the market.[9]

While reporting transactions on a real-time basis for convertible debt securities may impose a marginal burden on brokers and dealers, the benefits to the market and to public investors obtained from more complete and effective surveillance information far outweigh any burdens. Moreover, elimination of end-of-day volume reporting will be a beneficial offset.

2. "Odd Lot" Transactions

Increased transparency in the relatively illiquid convertible bond market could have significant costs in terms of liquidity and dealer participation in such a market. In balancing the benefits to be gained by increased transparency with the potential burdens to the convertible debt market, the NASD has determined that, at this time, only the "odd lot" transactions (transactions of 99 bonds or less) will be disseminated on a real-time basis. While the Commission acknowledges that this proposal establishes different treatment for convertible debt securities than for equities traded on Nasdaq, the Commission recognizes the inherent differences in the bond and equity marketplaces.[10] For example, bond issues are generally smaller than stock issues, while individual trades in bonds can represent large percentages of outstanding floats of bond issues. The bond market, moreover, is an institutional market and the pattern of trading is characterized by a few, large transactions that may be easily identified and tracked, to the disadvantage of the dealer and the client. Therefore, the Commission believes this proposal is a positive first step toward increased transparency in the convertible debt market. While the Commission is willing to approve the filing as proposed to allow time to evaluate the effect of transparency on the market, the limitation of "odd-lot" only transaction reporting need not be permanent, and the Commission will monitor the market and review its ability to withstand increased transparency.

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with section 15A(b)(6) of the Act, and that it is appropriate to approve transaction

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[7] The NASD expects members will use the Automated Confirmation Transaction Service ("ACT"). In most instances, the market maker registered in the bond in the Nasdaq system would be the reporting party. If there are two market makers, however, the sell side would report. The execution price reported to the NASD would exclude commission, markup, or markdown. For members that trade infrequently, the NASD will make the ACT service desk available for trade reporting purposes. The NASD operates the ACT service desk to facilitate trade reporting by members that do not have Nasdaq Workstation equipment and account for fewer than five trades a day on average. Therefore, the ACT service desk will also be made available to members that qualify under the same criteria for trade reporting of convertible debt (five or fewer trades a day on average).

[8] As of the date of this order, the NASD has not completed the systems changes necessary to implement the dissemination function. Accordingly, the Commission, by this order, approves the proposed rule changes that would permit the NASD to implement this function subject to the following conditions: (1) Submission of system change notification consistent with the Commission's Automation Review Policy II [*See* Securities Exchange Act Release No. 29185 (May 9, 1991, 56 FR 22490)]; (2) successful completion of functionality, capacity and stress testing of the system changes; and (3) notification to the Commission staff containing representations regarding the effective completion of those tests and confirming the effectiveness of the system.

[9] In June 1992, the NASD implemented transaction reporting requirements for Nasdaq Small-Cap securities, similar to the requirements in place for Nasdaq/NMS securities. In its approval order, the Commission stated that transparency, in the form of last sale and quotation information, provides three important benefits to the market: (1) Allows for efficient pricing within a market by allowing all market participants to access overall supply and demand; (2) allows investors to monitor more effectively the quality of executions they receive and the size of the dealer markup on the transaction; and (3) has the potential for enhancing the liquidity of the referenced securities by increasing visibility through trade reporting. *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

[10] *See* Securities Exchange Act Release No. 32019 (March 19, 1993), 58 FR 16428.

reporting for certain convertible debt securities.[11]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15688 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Van Kampen Merritt Ohio Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10867)
Van Kampen Merritt Massachusetts Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10868)
Van Kampen Merritt New Jersey Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10869)
Holly Residential Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–10870)
Burlington Resources Coal Seam Gas Royalty Trust
Turst Units (File No. 7–10871)
Nuveen Pennsylvania Premium Income Municipal 3
Common Stock, $.01 Par Value (File No. 7–10872)
Nuveen California Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10873)
Nuveen New Jersey Premium Income Municipal 3
Common Stock, $.01 Par Value (File No. 7–10874)
Nuveen Florida Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10875)
Nuveen New York Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10876)
Blackrock Broad Investment Grade 2009 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10877)
Minnesota Municipal Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–10878)
Putnam Managed High Yield Trust
Common Stock, $.01 Par Value (File No. 7–10879)
American Municipal Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–10880)
Brock Exploration Corporation
Common Stock, $.01 Par Value (File No. 7–10881)
Libbey, Inc.
Common Stock, $.01 Par Value (File No. 7–10882)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15664 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25838]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 25, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 19, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6060)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 9(a) and 10 of the Act to its application filed under sections 9(a) and 10 of the Act.

By orders dated November 9, 1977 and May 16, 1979 (HCAR Nos. 20251 and 21048, respectively) (together, Order"), I&M was authorized to enter into an agreement of sale ("Agreement") with the City of Sullivan, Indiana ("City") concerning the construction, installation, financing acquisition and sale of pollution control facilities ("Facilities") at I&M's Breed Generating Plant. Under the Agreement, the City may issue an sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the City and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded. The Agreement provides that the Revenue and Refunding Bonds shall have such terms as shall be specified by I&M.

I&M was also authorized to convey an undivided interest in a portion of the Facilities to the City, and to reacquire

[11] The Commission's approval of the dissemination function of this proposal is subject to the conditions outlined above. *See* Footnote 8.

[12] 17 CFR 200.30–3(a)(12).

that interest under an installment sales arrangement requiring I&M to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the City to pay, when due, the interest and principal on the Revenue Bonds and Refunding Bonds. Under the Order, the City has issued and sold two series of Revenue Bonds in connection with the financing of the Facilities in an aggregate principal amount of $45 million.

It is now proposed that I&M will effect the City's issuance and sale of its series C Refunding Bonds ("C Bonds") in the aggregate principal amount of $45 million, prior to December 31, 1993, pursuant to underwriting arrangements between Goldman, Sachs & Co. and the City. The C Bonds will be issued under and secured by the Indenture and a Second Supplemental Indenture of Trust between the City and the Trustee.

The proceeds from the issuance and sale of the C Bonds will be used to provide for the early redemption of the entire $45 million principal amount of outstanding Revenue Bonds, as follows: (1) $25 million principal amount of the series A Revenue Bonds bearing interest at a fixed rate of 6⅞% per annum and maturing on May 1, 2006 ("2006 Bonds"); (2) $7 million principal amount of the Series B Revenue Bonds bearing interest at a fixed rate of 7⅜% per annum and maturing on May 1, 2004 ("2004 Bonds"); and (3) $13 million principal amount of the Series B Revenue Bonds bearing interest at a fixed rate of 7½% per annum and maturing on May 1, 2009 ("2009 Bonds"). Currently, the 2006 Bonds may be redeemed at a price of 100½% of the principal amount, and the 2004 Bonds and the 2009 Bonds may be redeemed at a prince of 101% of the principal amount.

I&M is advised that the series C Bonds will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. The series C Bonds may be subject to mandatory redemption under circumstances and terms to be specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the series C Bonds may not be redeemable at the option of the City in whole or in part at any time for a period to be determined at the time of pricing. I&M may provide some form of credit enhancement for the C Bonds, such as a letter of credit, surety bond or bond insurance, and pay associate fees.

I&M will not agree, without further order of the Commission, to the issuance of any series C Bond by the City if: (1) The stated maturity of any such bond shall be more than 30 years; (2) the rate of interest to be borne by any such bond shall exceed 7.5% per annum; (3) the discount from the initial public offering price of any such bond exceeds 5% of the principal amount; or (4) the initial public offering price is less than 95% of the principal amount. I&M will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the series C Bonds.

The Columbia Gas System, Inc., et al. (70–8012)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, TriStar Ventures Corporation ("TVC"), a nonutility subsidiary company of Columbia, both located at 20 Montchanin Road, Wilmington, Delaware 19087, TriStar Georgetown General Corporation and TriStar Georgetown Limited Corporation (collectively, the "Georgetown Cogeneration Subsidiaries"), each a wholly owned subsidiary company of TVC and located at the same address as Columbia and TVC, and Georgetown Cogeneration, L.P. ("GCLP" and, together with Columbia, TVC and the Georgetown Cogeneration Subsidiaries, "Applicants"), a partly owned subsidiary company of the Georgetown Cogeneration Subsidiaries, P.O. Box 26532, Richmond, Virginia 23261, have filed a post effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder to their application-declaration originally filed under sections 6(a), 7, 9(a), 10, 12 and 13 of the Act and rules 43, 45, 50(a)(5), 51, 86, 87(b)(1), 90(d)(1) and 91 thereunder.

The Georgetown Cogeneration Subsidiaries hold an aggregate 50% interest in GCLP, which proposes to construct a 56 megawatt facility on the Georgetown University campus in Washington, D.C. ("Georgetown Project"). The Georgetown Project has been certified as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder.

In an order dated September 17, 1992 (HCAR No. 25635) ("September Order"), the Commission reserved jurisdiction over the investment by Columbia, TVC and the Georgetown Cogneration Subsidiaries of $8.3 million in the Georgetown Project. The Commission also reserved jurisdiction over the procurement of a then-expected $66.4 million in project financing for that project. On November 9, 1992 (HCAR No. 25672), the Commission authorized TVC to issue $4.3 million in securities, of the $8.3 million reserved by the September Order, to Columbia in order to meet certain development and administrative expenses incurred in connection with the Georgetown Project. The Commission continued to reserve jurisdiction over the sale by TVC of the remaining $4.0 million in securities to Columbia and the investment by TVC of $8.3 as equity in the Georgetown Cogeneration Subsidiaries.

TVC now seeks to contribute at any time or from time to time through December 31, 1995 $16.5 million in the Georgetown Cogeneration Subsidiaries via the acquisition of common stock at a par value of $25 per share for investment in the Georgetown Project. This represents an increase of $8.2 million over the earlier request of $8.3 million. The Georgetown Cogeneration Subsidiaries request authority through December 31, 1995 to invest, and/or to commit to lenders to the Georgetown Project to invest, $16.5 million in GCLP as a capital contribution for investment in the Georgetown Project.

This increase over the original request to invest $8.3 million is driven by several factors. First, an increase of $.7 million (to $9.0 million) in the equity contribution by the Georgetown Cogeneration Subsidiaries in GCLP is required by lenders to the Georgetown Project ("Georgetown Lenders") due to an increase in the expected cost of the Georgetown Project to $90 million. Secondly, there is a possible need for an additional $2.25 million due to a requirement by the Georgetown Lenders that may increase the Georgetown Cogeneration Subsidiaries' share in the costs of the Georgetown Project from 10% to 12.5%. Thirdly, additional funds of up to $2.5 million may be required by the Georgetown Lenders to cover the Georgetown Cogeneration Subsidiaries' share of possible cost overruns. Lastly, the Georgetown Lenders may require that the Georgetown Cogeneration Subsidiaries fund an amount of up to $2.75 million for operational reserves, such as maintenance.

The funds for the $16.5 million contribution would come from: (a) The issuance, by TVC of $4.0 million in common stock to Columbia, at a par value of $25 per share, jurisdiction over

which had been earlier reserved by the Commission; (b) $4.3 million in development cost refunds expected following the closing on the debt financing for the Georgetown Project; and (c) the remainder in a combination of refunds of development expenditures, accelerated contingent equity contributions and tax payments.

Additionally, GCLP and the Cogeneration Subsidiaries seek approval to borrow at any time or from time to time through December 31, 1995 up to $95 million in debt financing for the Georgetown Project. The construction loan ("Construction Loan") would be for an amount up to the cost of the project, presently estimated at $90 million, plus an additional $5 million in possible cost overruns. This loan would mature no later than December 31, 1995 and be refinanced, up to 80%, by a long-term loan ("Term Loan") for up to $76 million maturing no later than sixteen years after the $76 million has been borrowed under the long-term facility.

Each of the Construction Loan and the Term Loan would bear an interest rate that would not exceed the highest of (a) LIBOR plus 200 basis points, (b) the Fed Funds rate or the Georgetown Lenders' agent's prime rate plus 130 basis points, or (c) the CD rate plus 215 basis points. The following fees would be owed to the Georgetown Lenders in connection with the proposed debt financing: (a) An up-front fee not to exceed 1.75% of the Construction Loan amount; (b) an annual administrative fee not to exceed $80,000; and (c) a commitment fee not to exceed .75% per annum on the unused portion of the Construction Loan.

Additionally, GCLP and/or the Georgetown Cogeneration Subsidiaries may enter into interest rate protection agreements to hedge against the floating interest rates in the Construction Loan and/ or the Term Loan in a notional amount up to $95 million. The interest rate on the hedged notional amount will not exceed 11%, plus the applicable margins described above. If such agreements are entered into with the Lenders, an additional fee not to exceed. 75% of the notional amount may be assessed.

The Construction Loan and the Term Loan will be secured by GCLP's assets and by a pledge by the Georgetown Cogeneration Subsidiaries of their (a) equity interest in GCLP and (b) rights to certain reserve accounts. Additionally, the Georgetown Cogeneration Subsidiaries request authority to guaranty obligations of GCLP under the Term Loan and the Construction Loan.

The Georgetown Cogeneration Subsidiaries also request authority to obtain letters of credit to secure an obligation to the Georgetown Lenders to maintain certain equity levels, up to $16.5 million, in GCLP. Any amounts payable under the reimbursement agreement would bear an interest charge at the federal funds rate and would be due no later than the maturity date on the Term Loan. Additionally, GCLP requests that it be permitted to issue notes under the Construction Loan pursuant to an exception from competitive bidding procedures of Rule 50 under Rule 50(a)(5).

Potomac Edison Company (70–8082)

Potomac Edison Company ("PEC"), 10435 Downsville Pike, Hagerstown, Maryland 21740, an electric public-utility subsidiary company of Allegheny Power Systems, Inc., a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

PEC requests authority through December 31, 1993 to redeem 4,046 shares of its 4.70% Cumulative Preferred Stock ("Preferred Stock"), Series B, par value $100 per share, at the current optional redemption price of $101 per share. PEC seeks to redeem the Preferred Stock in order to eliminate the large administrative expense, approximately $10,500, incurred in complying with a repurchase covenant to attempt to acquire 750 shares of the Preferred Stock annually. PEC would not issue any securities in connection with the proposed redemption but would effect such redemption with cash on hand.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15665 Filed 7–1–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2655]

Ohio and Contiguous Counties in Pennsylvania; Declaration of Disaster Loan Area

Mahoning County and the contiguous counties of Columbiana, Portage, Stark, and Trumbull in Ohio, and Lawrence and Mercer Counties in Pennsylvania constitute a disaster area as a result of damages caused by high winds, heavy rains, and flooding which occurred on June 8, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 23, 1993 and for economic injury until the close of business on March 23, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265506 for Ohio and 265606 for Pennsylvania. For economic injury the numbers are 792400 for Ohio and 792500 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 23, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–15759 Filed 7–1–93; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2648]

Oklahoma; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated June 23, 1993 to include Osage County, Oklahoma as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 8 and continuing through May 26, 1993.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1993 and for economic injury the deadline is February 15, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated June 23, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–15760 Filed 7–1–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 part 11).

Issued in Washington, DC, on June 28, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No. 27306

Petitioners: Nockair Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 133.43 (a) and (b)

Description of Relief Sought:

To allow Nockair Helicopters Inc. and Nockair Entertainment Inc. to perform an aerial trapeze act, without meeting the requirement to have a means for jettisoning a man-carrying Class B load.

[FR Doc. 93–15722 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In May 1993, there were 10 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Lee County Port Authority (LCPA), Fort Myers, Florida.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $252,548,262.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: June 1, 2015.

Class of Air Carriers Not Required to Collect PFC's:

Previously approved in August 31, 1992 decision.

Brief Description of Projects Approved to Use PFC Revenue:

Landside at Southwest Florida Regional (RSW) Airport: Commuter terminal facilities.

Airside at RSW: Commuter aircraft ramp.

Brief Description of Project Approved-in-Part to Use PFC Revenue:

Airside at RSW: Runway 6/24 extension.

Determination: The FAA is limiting its approval for use of PFC revenue to a runway extension of 2,400 feet to 10,800 feet. The FAA is not approving use of PFC revenue on the remaining 1,200 feet of the proposed extension at this time because the LCPA has not demonstrated that it can meet the Airport Improvement Program (AIP) eligibility requirement for runway extensions, which is 500 annual itinerant operations by critical aircraft.

Decision Date: May 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bart Vernace, Orlando Airports District Office, (407) 648–6583.

Public Agency: Gogebic-Iron Airport Board, Ironwood, Michigan.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $74,690.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: October 1, 1998.

Class of Air Carriers Not Required to Collect PFC's:

Part 135 operators who file FAA Form 1800–31.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved:

Reimbursement for runway 9/27 improvements, Airfield signage.

Taxiway lighting on taxiways A, B, and J.

Decision Date: May 11, 1933.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Department of Aviation, Philadelphia, Pennsylvania.

Application Type: Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $76,169,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: July 1, 1995.

Class of Air Carriers Not Required to Collect PFC's:

Previously approved in June 29, 1992 decision.

Brief Description of Projects Approved to Use PFC Revenue:

Upgrade of airfield signage system, Fire alarm system expansion.

Moving sidewalks.

Brief Description of Project Approved-in-Part to Use PFC:

Ground transportation improvements.

Determination: A portion of this project is AIP eligible (paragraph 553(a)

of FAA Order 5100.38A, AIP Handbook). However, the public telephones and the vehicle access card readers are considered revenue-producing and, as such, are specifically ineligible under paragraph 551(d) of FAA Order 5100.38A.

Decision Date: May 14, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Walsh, Harrisburg Airports District Office, (717) 782–4548.

Public Agency: Gallatin Airport Authority, Belgrade, Montana.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $4,198,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: June 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: On demand non-scheduled air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Project Approved to Use PFC Revenue:

Terminal expansion, phases I and II.

Decision Date: May 17, 1993.

FOR FURTHER INFORMATION CONTACT: David Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Port of Port Angeles, Port Angeles, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $52,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: August 1, 1994.

Class of Air Carriers Not Required to Collect PFC'S:

Air Taxi operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use:

Runway and taxiway signage, Airport access road,

Terminal area planning, Runway safety area.

Decision Date: May 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: Great Falls International Airport Authority, Great Falls, Montana.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,010,900.

Earliest Permissible Charge Effective Date: November 1, 1992.

Duration of Authority to Impose: July 1, 2002.

Class of Air Carriers Not Required to Collect PFC'S:

Previously approved in August 28, 1992 decision.

Brief Description of Project Approved to Use PFC Revenue:

Airport fire station.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: David Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: Jackson Hole Airport Board, Jackson, Wyoming.

Aplication Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $1,081,183.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: February 1, 1996.

Class of Air Carriers Not Required to Collect PFC's:

None.

Brief Description of Projects Approved to Impose and Use: Airport planning study, Safety equipment, Runway safety improvements, Apron Safety improvements, Access control system and perimeter fencing, Terminal building expansion.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dakota Chamberlian, Denver Airports District Office, (303) 286–5543.

Public Agency: Brainerd-Crow Wing County Regional Airport Commission, Brainerd, Minnesota.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved PFC Revenue: $43,000.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: July 1, 1994.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use: Install airfield signs, Environmental assessment/ environmental impact statement, Rehabilitation/replacement of non-revenue-producing terminal area parking lot pavement.

Brief Description of Projects Disapproved:

Construction of the southwest building area.

Determination: The "Project Description & Justification" provided in the application does not include information for the southwest building area discussed at the air carrier consultation meeting and shown in the financial plan. In addition, § 158.25(c)(1)(ii)(B) requires that all environmental reviews, required by the National Environmental Policy Act (NEPA) of 1969, be completed prior to application. The NEPA requirement for this project has not been satisfied. Therefore, this project is not PFC eligible.

Installation of a localizer to serve runway 5.

Determination: Section 158.25(c)(1)(ii)(A) requires that all development items be shown on an approved ALP prior to making application for authority to use PFC revenue. The proposed localizer to serve runway 5 is not on an approved ALP. In addition § 158.25(c)(1)(ii)(B) of the regulation requires that all environmental reviews, required by NEPA be completed prior to application. The NEPA requirement for this project has not been satisfied. The NEPA requirement for this project has not been satisfied. Therefore, this project is not PFC eligible.

Decision Date: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4421.

Public Agency: Ports of Chelan and Douglas Counties, East Wenatchee, Washington.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $280,500.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: October 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use:

Construct new terminal, access road, access road lighting, apron, and airport layout plan.

Decision Date: May 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,256,126.

Earliest Permissible Charge Effective Date: August 1, 1993.

Duration of Authority to Impose: April 1, 1998.

Class of Air Carriers Not Required to Collect PFC's:

(1) Unscheduled part 135 charter operators for hire to the general public and (2) unscheduled part 121 charter operators for hire to the general public.

Determination: Approved. The FAA has determined that each proposed class accounts for less than 1 percent of the airport's total annual emplanements.

Brief Description of Projects Approved to Impose and Use: Conduct master plan, Rehabilitate general aviation ramp, Upgrade airfield signage, Remove and light obstructions, Purchase snowbroom, Replace airport beacon, Purchase security radio repeater, Purchase wheelchair lift device, Install centerline lighting, runway 5/23, Complete terminal apron expansion, Expand ticket lobby and holdroom, Purchase loading bridges, Upgrade baggage delivery system, Replace 1500-gallon crash truck, Replace quick dash fire truck, Replace security vehicle, Replace two snowplow trucks, Replace terminal emergency generator.

Brief Description of Projects Approved to Impose Only: Overlay/groove runway 5/23, asphalt blast pads, Overlay taxiways B and C, Realign taxiway A and install new taxiway A–2; remove hill; relocate tank and radar, Master plan update study, Rehabilitate airfield lighting, Purchase snowroom (second).

Brief Description of Project Disapproved: Overlay loop roadway.

Determination: Disapproved. The justification provided in the application indicates that the overlay of the roadway "is a normal pavement life cycle consideration" implying that the project is for pavement maintenance and not eligible under AIP criteria.

Decision Date: May 28, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Scheff, Beckley Airports Field Office, (3040 252–6216).

Issued in Washington, DC on June 28, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama:					
Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California:					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	06/01/1993	07/01/1998
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	01/09/1993
Puerto Rico:					
Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1993
Washington:					
Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
Guam:					
Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Texas:					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virgina:					
Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
Washington:					
Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	07/01/1994
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Pennsylvaina:					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Tennessee:					
Memphis International, Memphis	05/28/1992	3	26,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Ohio:					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma:					
Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon:					
Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
New York:					
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1993
John F. Kennedy International, New York	07/23/1992	3	109,960,000	10/01/1992	08/01/1995
La Guardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota:					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Montana:					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
Newark International, Newark	07/23/1992	3	84,500,000	10/01/1992	08/01/1995
New York:					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Minnesota:					
Minneapolis-St. Paul International Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Massachusetts:					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional Airport of Emmet C, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Indiana:					
Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
Iowa:					
Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Louisiana:					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
New Orleans International/ Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Georgia:					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Florida:					
Southwest Florida Regional, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
California:					
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
Denver International (new), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Florida:					
Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
California:					
Ontario International, Ontario	03/26/1993	3	49,000,000	06/01/1993	07/01/1998
Palm Springs Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93–15725 Filed 7–1–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Fort Bend and Harris Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a draft environmental impact statement will be prepared for the State Highway 122 (Fort Bend Parkway) in Fort Bend and Harris Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. G.E. Olvera, P.E., 826 Federal Building, 300 East 8th Street, Austin, Texas, 78701. Telephone: (512) 482–5516. Mr. Kenneth C. Bohuslav, P.E., Texas Department of Transportation, Division of Highway Design, 125 East 11th Street, Austin, Texas, 78701. Telephone: (512) 416–2606.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation, will prepare an environmental impact statement (EIS) on the proposed State Highway 122 (Fort Bend Parkway) in Fort Bend and Harris Counties, Texas. State Highway 122 is a limited access freeway proposed for construction from proposed Beltway 8, at Hillcroft Boulevard, to State Highway 6, near Knight Road. This proposed roadway, functionally classified as an urban freeway, will be approximately 6.3 miles in length. This roadway is considered necessary to provide for existing and projected traffic levels in the area.

Three reasonable alternative routes for the proposed State Highway 122 will be evaluated in the draft EIS, plus the no action (no build) alternative. The three alternative corridors for this roadway will be analyzed for all anticipated impacts caused by the construction and operation of this proposed highway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held on August 18, 1993, at 7 p.m. at the Missouri City Community Center, 1522 Texas Parkway (FM 2234), Missouri City, Texas. The purpose of the scoping meeting is to explain the proposal, to review the draft Environmental Assessment (EA), and to offer an opportunity for the public and agencies to identify significant issues that should be focused upon in the EIS. A public hearing will be held after the draft EIS is completed. The scoping meeting and the public hearing will be held for interested citizens to express their concerns regarding the social, economic, and environmental aspects of the proposed project. Public notice will be given for the time and place of the scoping meeting and the public hearing. The draft EIS will be available for public

and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action, the draft EA, and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 25, 1993.

G.E. Olvera,

District Engineer, Austin, Texas.

[FR Doc. 93–15655 Filed 7–1–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–02]

Access to Records; Authority Delegation

June 28, 1993.

1. *Delegation.* This directive delegates to the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) and the Deputy Assistant Secretary (Law Enforcement), authority to make determinations on any appeal assigned to the Office of Enforcement under 5 U.S.C. 552 and 5 U.S.C. 552a.

2. *Cancellation.* Treasury Directive 15–02, "Access to Records," dated September 29, 1986, is superseded.

3. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15750 Filed 7–1–93; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

[T.D. 93–47]

RECORDATION OF TRADE NAME: "NLC"

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: On Friday, April 23, 1993, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "NLC, Inc.(sic)," was published in the **Federal Register** (58 FR 21772). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 23, 1993. No responses were received in opposition to the notice.

The specific version of the trade name claimed by NLC, Inc., in its application letter is "NLC." Accordingly, as provided in § 133.14, Customs Regulation (19 CFR 133.14), the name "NLC" is recorded as the trade name used by NLC, Inc., a corporation organized under the laws of the state of Missouri, located at 319 West Main Street, P.O. Box 348, Jackson, Missouri 63755. The trade name is used in connection with arc welding accessories which are sold under the trademark "LENCO" and include electrode holders, ground clamps, cable connectors, lugs, splicers and chipping hammers, resistance spot welders and computer controlled welding trainers.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 482–6960.

Dated: June 28, 1993.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 93–15737 Filed 7–1–93; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 126
Friday, July 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 28, 1993, 58 FR 34619.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 30, 1993, 10 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG–7 on the Agenda scheduled for June 30, 1993:

Item No., Docket No., and Company

CAG–7—RP93–128–000 and RP85–177–102, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 93–15911 Filed 6–30–93; 4:00 pm]

BILLING CODE 6717–02–M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: 2:00 p.m.–4:00 p.m., July 12, 1993.

PLACE: 901 N. Stuart Street, Tenth Floor Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR Part 1004.4 (b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the April 12, 1992, Board Meeting
2. The Chairman's Report
3. The President's Report
4. 1992 *Year in Review* Report
5. Foundation's Participation in Review of U.S. Foreign Assistance Programs
6. Review of FY 1994 and 1995 Foundation Budgets
7. Board's Advocacy in Promoting Foundation's Programs
8. The Audit Committee Report (Closed Session)
9. Personnel Expenses (Closed Session)

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. France, Secretary to the Board of Directors, (703) 841–3894.

Dated June 29, 1993.

Adolfo A Franco,

Sunshine Act Officer.

[FR Doc. 93–15808 Filed 6–30–93; 9:43 am]

BILLING CODE 7025–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 11:00 a.m., Wednesday, July 7, 1993.

PLACE: Filene Board Room, 7th Floor, 1776 Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Betty Baker,

Secretary of the Board.

[FR Doc. 93–15859 Filed 6–30–93; 12:38 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Thursday, July 1, 1993.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action) and exemption (10) (deliberations concern * * * the Board's participation in a civil action * * * or disposition by the Board of particular * * * unfair labor practice proceedings * * * or any court proceedings, collateral or ancillary thereto).

MATTERS CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 254–9430.

Dated: Washington, D.C., June 30, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 93–15910 Filed 6–30–93; 4:00 pm]

BILLING CODE 7545–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (Closed Portion), 2:30 p.m. (Open Portion), Tuesday, July 13, 1993.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:30 p.m.):

1. President's Report
2. Finance Project in Philippines
3. Finance Project in Israel
4. Approval of 4/27/93 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.)

1. Approval of the 4/27/93 Minutes (Open Portion)
2. Personnel Appointments
3. Information Reports
4. Recommendation for meeting schedule through end of December 1993.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202)–336–8403.

Dated: June 30, 1993.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 93–15900 Filed 6–30–93; 3:22 pm]

BILLING CODE 3210–01–M

federal register

Friday
July 2, 1993

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Part 404 et al.

Social Security Benefits: Endocrine, and Multiple Body Systems; Immune Systems; Presumptive Disability and Blindness: Human Immunodeficiency Virus Infection; Evaluation; Rules and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AC06

Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Revision of Part A and Part B of the Listing of Impairments; Endocrine, and Multiple Body Systems; Immune System

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments establish a new listing section called "Immune System" in both part A and part B of "Listing of Impairments." The new part A (adult) listings section includes up-to-date criteria for evaluation of connective tissue diseases (previously contained in the "Multiple Body Systems" section) and establishes a listing for the evaluation of human immunodeficiency virus (HIV) infection. The amendments also move the adult listing for obesity from the "Multiple Body Systems" section to the "Endocrine System" section, and change the name of the "Endocrine System" section to "Endocrine System and Obesity." The new part B (childhood) section establishes a listing for the evaluation of human immunodeficiency virus (HIV) infection, includes up-to-date criteria for evaluation of congenital immune deficiency disease (previously contained in the "Multiple Body Systems" section), and adds new criteria for evaluation of connective tissue diseases.

These criteria describe disorders that are severe enough to prevent a person from performing any gainful activity, or in the case of a child under age 18 applying for Supplemental Security Income (SSI) based on disability, severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner.

EFFECTIVE DATE: These rules are effective July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or Richard M. Bresnick, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6242 or 965–1758.

SUPPLEMENTARY INFORMATION: The Social Security Act (the Act) provides, in title II, for the payment of disability benefits to workers insured under the Act. Title II also provides for the payment of child's insurance benefits for persons who become disabled before age 22 and widow's and widower's insurance benefits based on disability for widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are disabled and have limited income and resources. For workers insured under title II, for children of workers insured under title II who become disabled before age 22, for widows, widowers, and surviving divorced spouses claiming widow's or widower's insurance benefits based on disability under title II, and for adults claiming SSI benefits based on disability, "disability" means inability to engage in any substantial gainful activity. For children under the age of 18 who apply for SSI benefits based on disability, "disability" means that the child's physical or mental impairment(s) is of comparable severity to an impairment that would make an adult (a person age 18 or older) disabled. Under both title II and title XVI, "disability" must be by reason of a medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. To the extent that Medicare and Medicaid eligibility are based on title II and title XVI eligibility, these regulations also affect the Medicare and Medicaid programs.

Under the sequential evaluation process, if the evidence shows that an individual is not engaging in substantial gainful activity and has an impairment(s) that meets the duration requirement, is severe, and meets or equals in severity a listing criteria, the individual is disabled. (In the case of a child applying for SSI, this includes consideration of whether the child's impairment(s) is functionally equivalent to a listed impairment, as defined in § 416.926a.) If the impairment(s) (e.g., HIV infection) does not meet or equal in severity any listing criteria, we evaluate all signs, symptoms, laboratory findings, and other evidence to determine whether the person is disabled. For an adult, we assess residual functional capacity and, based on that assessment, determine whether the claimant retains the capacity to perform past relevant work, or, if not, whether he or she retains the capacity to perform any other work considering his or her residual functional capacity, age, education, and work experience. If not, the adult is disabled. For a child under the age of 18 applying for SSI, we individually assess the child's ability to function to determine whether there is a substantial reduction in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. If there is such a substantial reduction, the child is disabled.

Medical criteria for evaluating disability and blindness at the third step of the sequential evaluation processes for adults and children are found in the listings. The listings include examples of the most commonly occurring medical conditions for persons who file applications for disability benefits. It describes, for each of 13 major body systems, impairments that are considered severe enough to prevent an individual from engaging in any gainful activity, or in the case of a child under the age of 18 applying for SSI, examples of impairments that are severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. To establish disability under the Act, the impairment must be expected to result in death or last or be expected to last for a continuous period of not less than 12 months. Most of the listed impairments are permanent or are expected to result in death; in some instances, a specific durational requirement is a part of the medical criteria for the impairment (in addition to the 12-month duration requirement that applies to all impairments that are not expected to result in death). If an individual is not performing substantial gainful activity and has an impairment that meets the requirements of one of the listings, or has an impairment or combination of impairments that is equal in severity to one of the listings (and meets the duration requirement), the individual is disabled. If, however, the individual does not have an impairment which meets or equals in severity the requirements of a listing, the claim is not denied and no conclusion on the issue of disability is made. Rather, resolution of the issue of disability depends on other factors. For adults, these other factors are residual functional capacity, and, for adults who are unable to perform their past work, age, education, and work experience. For children whose impairments are severe but do not meet or equal in severity the requirements of a listing, we will do an individualized functional assessment and determine whether the child is able to function independently, appropriately, and effectively in an age-appropriate manner.

Appendix 1 consists of two parts, part A and part B. The criteria in part A

apply to the evaluation of impairments of adults but may, in some cases, be appropriate for evaluating impairments in children under age 18. Part B contains medical criteria for the evaluation of impairments in children under age 18 when criteria in part A do not give appropriate consideration to the particular effects of the disease processes in childhood. In evaluating disability for a child under age 18, we use part B first. If the child's impairment(s) does not meet or equal the medical criteria in part B, or the criteria in part B do not apply, then we use the medical criteria in part A, when the criteria are appropriate. To the extent possible, we maintain a structural and content relationship between parts A and B (see §§ 404.1525 and 416.925). When part A criteria are repeated in part B, our intent is to eliminate any question about their application to children.

We revised the listings on December 6, 1985 (50 FR 50068). At that time, as a result of medical advancements in disability evaluation and treatment, and program experience, we indicated that the listings should be reviewed periodically and updated. Accordingly, we specified termination dates for the listings ranging from 4 to 8 years. These final rules revise the listings to: Establish a new listing section called "Immune System" in both part A and part B of appendix 1; establish new listings for the evaluation of HIV infection in both adults and children; update the criteria for evaluation of connective tissue disorders in adults and for congenital immune deficiency disease in children; establish new criteria for evaluation of connective tissue disorders in children; move the adult listing for obesity from the "Multiple Body Systems" section to the "Endocrine System" section; change the name of the adult "Endocrine System" section to "Endocrine System and Obesity"; delete Hansen's disease (leprosy, formerly Listing 10.02) from the listings; and modify the "Multiple Body Systems" section for children to make it effective for 5 years.

We revised the connective tissue disorders criteria with information we received from individuals recommended by various professional groups, including the American College of Physicians, the American College of Rheumatology (formerly the American Rheumatism Association), the Arthritis Foundation, the Lupus Research Institute, the American Society of Internal Medicine, and from individual Federal and State representatives with expertise in the evaluation of disability claims involving connective tissue disorders. In addition, in developing the proposed part B criteria for children, we received information from individuals with expertise in these areas.

We developed the proposed listings contained in our December 18, 1991, Notice of Proposed Rulemaking (NPRM) (see 56 FR 65702) for HIV infection based in part on information from numerous individuals recommended by or affiliated with various professional organizations, including the Public Health Service's Centers for Disease Control (CDC), the Johns Hopkins Hospital, the State of Maryland AIDS Administration, the Department of Veterans Affairs, and Federal representatives with expertise in the evaluation of disability claims involving HIV infection. A number of individuals who commented on the NPRM expressed concern that we did not consult with experts on the various segments of the population who are infected with HIV, especially women and children. Therefore, in response to the comments, we obtained additional information about women and children and other segments of the population infected with HIV, and about other issues from experts in the Department of Health and Human Services, including experts from the Public Health Service's CDC, Health Resources and Services Administration, and National Institutes of Health. We also obtained additional assistance from individual physicians and other experts involved in the evaluation and treatment of HIV infection—particularly in women and children—in various parts of the country, as indicated below. We obtained additional information from individuals at Albert Einstein College of Medicine, Beth Israel Hospital, Bronx Lebanon Hospital, Columbia Presbyterian Hospital, Harlem Hospital, Montefiore Hospital, St. Luke's/Roosevelt Hospital, and St. Vincent's Hospital in New York; Howard University Hospital in Washington, DC; University of Maryland Medical Center and Johns Hopkins Hospital in Baltimore; University of Texas Medical School in Houston; Cook County Hospital and Children's Memorial Hospital in Chicago. Several of the experts were recommended to us by the American Medical Association and the American Academy of Pediatrics. We also received information from the American Medical Association and the HIV Project of the MFY Legal Services Inc., a legal advocacy group in New York City. Therefore, the listings contained in this final rule reflect updated information about HIV infection.

HIV Infection

In 1980, shortly after acquired immunodeficiency syndrome (AIDS) was first identified in the United States, the CDC developed a case definition in order to conduct epidemiologic surveillance. The CDC defined AIDS based on a variety of diseases that encompassed the most severe manifestations observed in infected individuals. In late 1982, we began receiving disability claims from individuals infected with HIV. We used the CDC's surveillance definition of AIDS in developing our initial criteria for determining disability of listing-level severity in people with AIDS. These criteria provided that an individual who had a confirmed diagnosis of AIDS, as manifested by one or more of the conditions identified by the CDC, and who was not engaging in substantial gainful activity, would have an impairment of listing-level severity. As medical knowledge and understanding about HIV infection was continuously refined, and with knowledge derived from adjudicating disability cases involving HIV infection, we updated our policies.

For instance, as early as 1983, clinicians identified a syndrome that for a time was known as AIDS-Related Complex (ARC), although that term was never used or defined by the CDC. Shortly thereafter, we issued instructions stressing our policy that the evaluation of disability in these cases was not limited to the CDC's surveillance definition of AIDS, that claimants with AIDS or ARC, like all disability claimants, must be evaluated on a case-by-case basis, and that an individual need not have fully developed AIDS to be found disabled.

We reminded our adjudicators that individuals who have immune system dysfunction, but who do not have a confirmed diagnosis of AIDS, may still have an impairment that is of listing-level severity, either because of a manifestation that, in and of itself, meets the criteria of a listing, or because an individual's impairment(s) is equal in severity to a listing. We said that, as with any medically determinable impairment, the assessment of severity must take into account all signs, symptoms, and laboratory findings—not only those included in our criteria—and must follow the full sequential evaluation process if an applicant's impairment(s) is severe and does not meet or equal in severity any listing.

As more information about HIV infection became available and as we gained even more adjudicative experience, it became apparent that HIV

infection was being manifested by impairments that were not encompassed under ARC, or in the CDC's criteria for AIDS. By 1987, we issued instructions that provided specific criteria beyond those covered in the CDC's surveillance definition for adjudicators to use in evaluating whether a claimant's impairment(s) was of listing-level severity. We have continued to update and refine our instructions to reflect the escalating array of information available on the manifestations of HIV infection.

We have always viewed AIDS (and other symptomatic HIV infection) from a different perspective than the CDC. The CDC defines AIDS for health purposes to enhance its capability for activities such as disease reporting and surveillance, epidemiologic studies, prevention and control activities, and public health policy and planning. Its definition is not intended to determine whether any statutory or legal requirements for disability are met. In evaluating disability claims, our concern is to determine whether an individual's impairment(s) is severe enough to prevent him or her from engaging in any substantial gainful activity (or, in the case of a child under age 18 applying for SSI, substantially reduces the child's ability to function independently, appropriately, and effectively in an age-appropriate manner).

In these final rules, we have made it clear that all our disability evaluation standards apply to cases of HIV infection in the same way they apply to cases involving other impairments. The standards require, on a case-by-case basis, an evaluation of all relevant factors, including the symptoms (such as pain, fatigue, and malaise), signs, and laboratory findings, as well as the effects of medication, on the ability to function, and a determination whether an individual is able to engage in substantial gainful activity or, in the case of a child, able to engage in age-appropriate activities. Although these final rules relate only to one part of the sequential evaluation process, they stress that (as we do for all individuals) we apply the full sequential evaluation process when adjudicating claims from individuals with HIV infection.

HIV Infection in Women and Children

These final rules include specific criteria to take into account the clinical manifestations and course of the disease in women and children.

The criteria in parts A and B recognize that HIV infection can manifest itself differently in women (including female adolescents) than in men. Therefore, the final rules state that it is important when reviewing the claim of a woman with HIV infection that manifestations of HIV infection that affect women (e.g., gynecological conditions) be considered in assessing impairment severity and the degree of functional loss. Similarly, the criteria in part B recognize that the disease process may manifest itself differently in children (especially younger children) than in adults.

Other Immune System Listings

The final rules also include listings for evaluation of other immune system disorders. In preparing these listings, our aim was to put less emphasis on disease labeling or diagnosis, and to place more emphasis on the functional impact on a person's ability to work or, in the case of an SSI claimant under age 18, on the ability to function independently, appropriately, and effectively in an age-appropriate manner.

Endocrine System and Obesity

We revised the adult listing for obesity and moved it from the Multiple Body Systems (10.00) to the Endocrine System (9.00), and renamed the latter Endocrine System and Obesity. Therefore, all listings that were under 10.00, Multiple Body Systems, are now under either 14.00, Immune System, or 9.00, Endocrine System and Obesity. We also converted the weight tables that accompany the obesity listing into metric measurements.

Explanation of the Final Rules

We published an NPRM in the **Federal Register** on December 18, 1991 (56 FR 65702), and invited interested persons, organizations, and groups to submit comments pertaining to the proposed rules within a period of 60 days from the date of publication of the NPRM. The comment period ended on February 18, 1992.

In response to the NPRM, we received over 7,000 letters containing comments pertaining to the changes we proposed. The majority of the letters were form letters in support of the proposed changes to the listing for systemic lupus erythematosus (final Listing 14.02). We also received a number of other form letters that were sent by multiple individuals. The majority of these letters concerned the proposed HIV infection listings. Many of these were from legal services organizations and advocacy groups, State and city government departments, Members of Congress, and individual lawyers. Some letters came from individuals or Government agencies whose responsibilities require them to make disability determinations involving HIV-related impairments under titles II and XVI of the Act. Other letters came from medical associations, hospitals, physicians and other medical professionals, or from individual private citizens.

The public comments were invaluable to us in drafting these final rules. Some of the commenters pointed out problems or potential problems with the proposed rules, and we adopted or accommodated many of these comments. Other commenters, however, suggested changes that would go beyond the scope of these rules, or even our authority in promulgating regulations. We carefully considered all the comments we received, and adopted the commenters' suggestions whenever possible. In the public comments section of this preamble, we address all the substantive comments and explain how we used the comments (or why we did not use them) in preparing these final rules.

The following is a summary of the listings we are adopting in these final rules, with an explanation of the more important changes we made from the text of the NPRM. We describe other changes in the public comments section of this preamble.

9.00 Endocrine System and Obesity

9.00 Endocrine System and Obesity

Because we have moved the listing for obesity from former Listing 10.10 to final Listing 9.09, we also moved the prefatory text describing obesity, which was formerly in 10.00B, to the second paragraph of final 9.00. We also revised the paragraph to make it more specific to listing-level determinations. In response to a comment, we added a second paragraph which clarifies that the weight-bearing criterion in Listing 9.09A refers to the lumbosacral spine, not the cervical or thoracic spines.

We changed the headings of 9.00 and 9.01 to include references to obesity. There are no changes in the headings from the NPRM.

9.09 Obesity

We revised the listing for obesity, which was previously Listing 10.10 in the Multiple Body Systems section, and moved it to the Endocrine System section, which we renamed Endocrine System and Obesity. The listing for obesity is now Listing 9.09. In addition, we revised paragraph 9.09A (formerly 10.10A) to clarify that the pain, limitation of motion, and evidence of arthritis required in that section must be in the same joint or in the lumbosacral spine. We clarified the rules based on questions we have received over the years.

In response to a public comment, we revised the language of the NPRM to make clear that the phrase "weight-bearing" applies to both the joints and the spine; the revision adds language describing the lower parts of the spine (the lumbosacral spine), which are the weight-bearing areas. This is not a substantive change, but a clarification of the policy as we have always applied it. In the final rules, we also made a technical correction to the weight tables that accompany the obesity listing. We converted the table values to the metric system. Except for some very minor rounding off necessitated by the conversion, we did not change any of the relative weight and height criteria from the prior rules.

14.00 Immune System

We have established a new section 14.00, Immune System. The new section includes criteria for systemic lupus erythematosus (14.02), systemic vasculitis (14.03), systemic sclerosis and scleroderma (14.04), polymyositis or dermatomyositis (14.05), undifferentiated connective tissue disorder (14.06), immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, excepting HIV infection (14.07), and HIV infection (14.08). We describe each of these listings below.

Final 14.00 includes all the criteria that were previously in 10.00, Multiple Body Systems, with the exception of former Listing 10.02, Hansen's disease (leprosy), which we have deleted, and former Listing 10.10, "Obesity." We deleted the Hansen's disease listing because new cases of the condition are almost nonexistent in the Western Hemisphere and because the disease can now usually be treated successfully. As already stated, we moved the obesity listing to 9.00. We reserved the entry for 10.00, which no longer contains any listings, for future use.

Although we made a number of editorial changes for clarity and consistency, we made few substantive changes from the NPRM in final Listings 14.02–14.07 and 114.02–114.07; that is, all but the HIV listings. We discuss those listings first, beginning with a summary of final 14.00A–C and 114.00A–C, the sections of the preface that are appropriate to the non-HIV listings. We then provide a summary of the provisions of, and changes to, the rules on HIV in 14.00D and 114.00D, and final Listings 14.08 and 114.08.

The Non-HIV Listings

14.00 and 114.00 Preface

Final 14.00A–C and 114.00A–C describe impairments of the immune system. We made a number of revisions in the final rules from the NPRM, both in response to comments and for technical reasons. Most of the changes were for consistency. We compared the rules in part A with those in part B and, wherever it was appropriate, added provisions that were lacking in one but were present in the other. We also revised language when both part A and part B contained the same provisions but used different language; the revisions simply make their language the same. As we explain below, none of these changes is substantive: They only improve the consistency and clarity of the rules.

14.00A and 114.00A

In 14.00A and 114.00A, we describe some of the components of the immune system. There are no changes from the NPRM.

14.00B and 114.00B

In final 14.00B and 114.00B, we discuss connective tissue disorders. In a technical correction, and for internal consistency, we changed the proposed phrase "connective tissue disease" in the first paragraph and throughout the preface to "connective tissue disorder." This is a more accurate description of the disorders. Moreover, the two phrases were used interchangeably in the NPRM; the revision now uses only one phrase throughout. We also changed the reference to "The American Rheumatism Association" in proposed 14.00B1 to the current name, "The American College of Rheumatology."

For consistency, we revised the language we had proposed as the second paragraph of 14.00B so that it better reflected the language we had proposed in the first paragraph of 114.00B (now the third paragraph in final 114.00B). We also made minor changes to the third paragraph of final 114.00B so that both paragraphs would say the same thing.

The final language in the second paragraph of 14.00B is almost identical to the proposed language. The most significant difference is that we deleted the proposed opening statement from the NPRM, "Each of these disorders should be differentiated diagnostically * * *," for conformity with the childhood rules. Although the clause was true, we believe that it is inherent in the remaining language of the paragraph, as well as being a basic principle of disability evaluation that need not be repeated in this particular context.

We expanded the third paragraph of final 14.00B from the NPRM to incorporate language that was formerly in proposed Listings 14.02–14.06 and 114.02. We simplified those listings, each of which repeated the same provisions about duration of active disease despite prescribed therapy, by incorporating the language into the preface and replacing the repetitious criteria in the listings with cross-references to the preface. We describe our reasons for this change in greater detail in the public comments section of this preamble. However, the revision is merely editorial, not substantive.

In the fourth paragraph of the final adult rules in 14.00B, we made two technical corrections, but no substantive changes. We replaced the abbreviation "SAL" with "SLE," for systemic lupus erythematosus, and we replaced the phrase "undifferentiated connective tissue disease" with "undifferentiated connective tissue disorder," as already described. We did not change the language of the fifth paragraph of the adult rules from the proposed language in the NPRM.

In the sixth paragraph of final 14.00B, we revised the first sentence to refer to "any gainful activity," which is the standard of severity in the listings, as set forth in §§ 404.1525 and 416.925, instead of the proposed "gainful work activities." This is a technical correction for consistency among the rules. We also added a sentence describing our use of the word "severe" in these listings. We explain this addition, and our reasons for making it, in the public comments section of this preamble. We added the latter sentence to the sixth paragraph of final 114.00B.

We made only minor editorial revisions in final 14.00B1–3 (for example, by deleting the word "Listing" before the listing numbers for consistency with other body system listings). In response to a comment, we revised 14.00B4, Polymyositis or dermatomyositis, to provide more information about the criteria for muscle weakness in final Listing 14.05. We also updated the terminology by replacing the references to SGOT and SGPT with the more current, generic term "aminotransferases."

In response to a comment, we added a discussion of so-called overlap syndromes to final 14.00B5. We also indicate that these syndromes are to be evaluated under Listing 14.06, Undifferentiated connective tissue disorders.

Finally, we made a number of nonsubstantive editorial revisions to the

childhood rules in 114.00B in addition to those already mentioned. We divided the first paragraph of the NPRM into three separate paragraphs for clarity and better conformity with the paragraphs in the corresponding adult rules. We added a new fourth paragraph, which is identical to the fifth paragraph of 14.00B, to stress the importance of considering the effects of treatment in connective tissue disorders; the addition is only for consistency between the adult and childhood rules.

We also established a new 114.00C to include allergies (also in conformity with the adult rules). We also moved the second and third paragraphs of proposed 114.00B, dealing with growth impairments and Kawasaki disease, into the new section. We did this because both of these paragraphs provide guidance about cross-referring to other listings: The second paragraph of proposed 114.00B provided that growth impairments could be evaluated under the listings in 100.00, and the third paragraph provided cross-reference listings for Kawasaki disease. Inasmuch as the guidance on allergic disorders refers to evaluation under the appropriate body system listing, we believe that it is clearest to group all three paragraphs together under the same heading.

14.00C and 114.00C

Final 14.00C of part A states that allergic disorders are discussed under the appropriate listing for the affected body system. We made no substantive changes from the NPRM in this paragraph. In a technical clarification, we added the phrase "and evaluated," to the sentence to make it clear that allergic disorders are both discussed and evaluated under the appropriate listing for the affected body system.

Final 114.00C of part B is new. As we have explained, we established the section in order to include the same guidance about allergic disorders in the childhood rules as is in the adult rules. We also moved the paragraphs about growth impairments and Kawasaki disease from proposed 114.00B into this new section for reasons already given. We also added a heading, for clarity. In a technical revision, we revised the provision on Kawasaki disease to better state our original intent. The proposed language could have suggested that Kawasaki disease is not a multisystem impairment when, in fact, all we meant to say was that disease of the coronary arteries is the usual cause of listing-level disease.

Because we added this new section in the childhood rules, we redesignated proposed 114.00C, on HIV infection, to 114.00D. This also makes the lettering of the childhood preface correspond to the lettering in the adult preface.

14.02–14.07 and 114.02–114.07 The Non-HIV Listings

14.02 and 114.02 Systemic Lupus Erythematosus

The final rules move former Listing 10.04 to 14.00, renumber it as Listing 14.02, and change the heading from "Disseminated lupus erythematosus" to "Systemic lupus erythematosus" to conform to the current nomenclature for this disease. They also establish a new Listing 114.02 for systemic lupus erythematosus in children that is nearly identical to the adult rule, but includes criteria for the possible limiting effects unique to children that are not included in the adult rules.

In the final adult rule, we expanded and revised the criteria formerly in Listing 10.04 to focus on and delineate severe functional loss. We also removed the requirement that this disorder be established by a positive lupus erythematosus (LE) preparation, biopsy, or positive anti-nuclear antibody (ANA) test in favor of the currently accepted 1982 criteria of the American College of Rheumatology for classification of this disease (cited in final 14.00B1). Both final Listings 14.02A and 114.02A describe listing-level abnormalities in a single organ or body system, whereas final Listings 14.02B and 114.02B describe disability resulting from functional loss of lesser severity than in Listing 14.02A or 114.02A in two or more organs or body systems, with severe documented constitutional symptoms and signs.

We revised both listings from the proposed language in the NPRM in response to public comments and for technical reasons. For reasons we have already explained, we removed the criteria, "Documented * * * by a longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed therapy during this period with the expectation that the disease will remain active for 12 months," from the proposed language in the first paragraph of Listings 14.02 and 114.02, as well as the similar language in Listings 14.02B and 114.02B; the criteria now appear in the third paragraph of 14.00B and the fifth paragraph of 114.00B and are applicable to all connective tissue disorders.

In final Listings 14.02A and 114.02A, we made minor technical revisions to several of the cross-references to other listings so that the listing now refers to other listing sections, rather than to individual listings. The change makes our method of cross-referencing consistent within the two listings. Moreover, by referring to entire body system listing sections instead of individual listings, we ensure that Listings 14.02 and 114.02 will remain current if the numbering changes as other body system listings are revised.

In response to a comment, we added a new Listing 114.02A3 for muscle involvement. The same criterion already appears in the adult rules at Listing 14.02A2. The addition of the new criterion required us to renumber the subsequent criteria. We also reversed the order of the criteria for endocrine and skin involvement so that they are in the same order that they appear in the cross-referenced listings. In response to a comment, we also added a cross-reference to final listing 14.04D to include listing-level Raynaud's phenomena under final Listings 14.02A5 and 114.02A6.

As we explain in the public comment section of this preamble, we also changed the phrase "severe, documented, incapacitating constitutional symptoms and signs" from proposed Listings 14.02B and 114.02B to "significant, documented, constitutional symptoms and signs" in order to clarify the phrase and make it consistent with language in final Listings 14.03 and 14.04.

14.03 and 114.03 Systemic Vasculitis

The final rules move prior Listing 10.03 to section 14.00, renumber it as Listing 14.03, and change the heading from "Polyarteritis or periarteritis nodosa (established by biopsy)" to "Systemic vasculitis" to correspond with currently accepted medical nomenclature. We also expanded this listing to emphasize the spectrum of vasculitic/arteritic syndromes that can preclude any gainful activity. These syndromes include classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders.

The only changes from the NPRM language in final Listing 14.03 are those that we have already described in connection with final Listing 14.02. We deleted the language about documentation of active disease for 3 months despite therapy and the expectation of persistence for 12 months from the opening paragraph of the listing and the similar language in Listing 14.03B, because the provisions are now in the third paragraph of final 14.00B. We also changed the phrase "severe, documented, constitutional symptoms and signs" in proposed

14.03B to "significant, documented, constitutional symptoms and signs" consistent with our revisions in Listings 14.02, 14.04, and 114.02.

The childhood listing for systemic vasculitis, 114.03, is unchanged substantively from the NPRM. We made a minor language change for clarity, but the listing still cross-refers to the adult rules in Listing 14.03, and also includes a criterion for growth impairment.

14.04 and 114.04 Systemic Sclerosis and Scleroderma

The final rules move prior Listing 10.05 to section 14.00, renumber it as Listing 14.04, and change the title from "Scleroderma or progressive systemic sclerosis (the diffuse or generalized form)" to "Systemic sclerosis and scleroderma." We deleted the term "progressive" from the title because it was redundant. The criteria in final Listing 14.04 describe systemic disease of severity that precludes performance of any gainful activity for the requisite duration. The proposed criteria provide greater specificity in describing listing-level severity in the extremities and target organs (i.e., lungs, heart, kidneys).

We changed the NPRM language in the same way we have already described in connection with final Listing 14.02. We deleted the language about documentation of active disease for 3 months despite therapy and the expectation of persistence for 12 months from the opening paragraph of the listing and the similar language in Listing 14.04B, because the provisions are now in the third paragraph of final 14.00B. We also changed the phrase "severe, documented, constitutional symptoms and signs" in proposed 14.03B to "significant, documented, constitutional symptoms and signs" consistent with our revisions in Listings 14.02, 14.03, and 114.02.

In response to a comment, we made a minor revision in final Listing 14.04D. We replaced the word "with" with the phrase "characterized by" to clarify our original intent that the phrase "digital ulcerations, ischemia, or gangrene" describes the severe Raynaud's phenomena in the listing.

We added a separate childhood listing because these disorders may be manifested differently in children than in adults. Moreover, even when the manifestations are similar, the impact on a child's growth, development, and age-appropriate functioning may be more serious than the impact on an adult's ability to perform work-related activity. We revised proposed Listing 114.04 by adding cross-references to the documentation requirements in 14.00B3 and 114.00B in the opening paragraph. The revision is for consistency with the corresponding adult section and is not substantive.

We also revised the cross-references to other listings in final Listings 14.04A and 114.04B so that both listings now refer to entire listing sections, rather than to individual listings. This makes the cross-references consistent with those in final Listings 14.02A and 114.02A, and ensures that the listings will remain current when other body systems are revised.

14.05 and 114.05 Polymyositis or Dermatomyositis

The prior listings formerly codified in 10.00ff did not include listings for polymyositis or dermatomyositis. We added the new adult listing to recognize the potential for a disabling work-related functional deficit in some patients with chronic refractory myopathy. We added a separate childhood listing because these disorders may be manifested differently in children than in adults. Moreover, even when the manifestations are similar, the impact on a child's growth, development, and age-appropriate functioning may be more serious than the impact on an adult's ability to perform work-related activity.

In response to public comments, we added a discussion on evaluating severity of muscle weakness to proposed 14.00B4 and changed the cross-reference in final Listing 14.05A from 11.12B to 14.00B4. In response to another comment, we also revised final Listing 14.05B1 to better describe impairment of swallowing. We describe these changes in greater detail in the public comments section of this preamble.

We made only minor revisions to the final childhood listing. As in final Listing 114.04, we added cross-references to the appropriate documentation requirements in final 14.00B4 and 114.00B. We also revised the remainder of the listing language for consistency with other listings.

14.06 and 114.06 Undifferentiated Connective Tissue Disorders

We added new undifferentiated connective tissue disorders listings in parts A and B because some individuals can be disabled at the listing-level by connective tissue disorders that cannot be classified with an exact diagnosis.

In response to a comment about the NPRM, we added to final Listing 14.06 a cross-reference to Listing 14.04. In response to another comment, we revised final Listing 114.06 to change the cross-reference from Listing 14.06 of the adult listings to Listings 114.02 or 114.04 of the childhood listings.

14.07 Immunoglobulin Deficiency Syndrome or Deficiencies of Cell-Mediated Immunity, Excepting HIV Infection; 114.07 Congenital Immune Deficiency Disease

We added new Listing 14.07 to provide criteria for adults comparable to those we formerly included for children in Listing 110.09 (now final Listing 114.07). The listing provides criteria with which to evaluate immunoglobulin deficiency syndromes and deficiencies of cell-mediated immunity, excepting HIV infection.

In the final rule, we reorganized the language of proposed Listing 14.07 in order to make it consistent with Listing 114.07. The reorganization does not change the criteria.

We moved prior Listing 110.09 to section 114.00, renumbered it as Listing 114.07, and changed the heading from "Immune deficiency disease" to "Congenital immune deficiency disease." As in the foregoing listings and throughout these listings, we revised the language of proposed Listing 114.07A1 to make it consistent with final Listing 14.07. Because of this revision, we have deleted the requirement from proposed Listing 114.07A1 that the episodes of recurrent, severe infections must have occurred in the 5 months prior to adjudication. This additional requirement was not only inconsistent with the adult rules, but would have made the childhood listing more stringent than the adult listing and would have been difficult to implement in our case adjudications at the various levels of appeal.

The HIV Listings

In response to the many comments we received about the proposed rules for evaluating HIV infection, we have extensively revised the final rules from the NPRM. The following are some of the most important changes in the final rules. Thereafter, we provide a summary of all of the final provisions pertaining to HIV, beginning with final 14.00D and 114.00D of the prefaces.

Reorganization and Simplification

The most obvious change we made to the proposed rules in response to public comments was to reorganize and rewrite the proposed HIV infection listings (14.08 and 114.08). We did so in response to many commenters' concerns about the complexity of the proposed listings, and suggestions that we include additional manifestations of HIV infection in the listings and delete or

modify some of the criteria we proposed.

Many commenters pointed out that the proposed listings were unnecessarily complex and repetitive for Social Security disability evaluation purposes. This was primarily because we had included in the listings both the CDC's criteria defining AIDS and other manifestations of symptomatic HIV infection we deemed appropriate for inclusion in our listings, even though they are not AIDS-defining under the CDC surveillance definition. As we have already explained, however, the CDC's criteria are primarily for surveillance purposes, not for the evaluation of disability; therefore, the CDC criteria contain requirements that are not necessary in our program.

For instance, the CDC surveillance definition contains criteria for establishing the diagnosis of AIDS in the presence of documented HIV infection, as well as when infection is not documented. However, both categories include a number of opportunistic infections in common that establish the diagnosis of AIDS; for example, pneumocystis carinii pneumonia and extrapulmonary cryptococcosis are included in both categories and, therefore, are repeated within the CDC's surveillance definition of AIDS. As many commenters pointed out, whereas it may be appropriate for the CDC surveillance definition to be repetitive for surveillance purposes, for Social Security disability purposes we need only be satisfied that a person with HIV infection has experienced one of the manifestations (for example, pneumocystis carinii pneumonia or extrapulmonary cryptococcosis) to conclude that the individual has a listing-level impairment. Therefore, it was unnecessary for us to have listed these infections in two places (proposed adult Listings 14.08A2 and C2, and childhood Listings 114.008A2 and C2 for extrapulmonary cryptococcal infections, and proposed adult Listings 14.08A8 and B2, and childhood Listings 114.08A9 and B2 for pneumocystis carinii pneumonia) when the outcome was the same in both instances. Similarly, the CDC surveillance definition includes several separate criteria for Hodgkin's and non-Hodgkin's lymphomas, which we had listed separately, following the CDC surveillance definition. We had also proposed to include other lymphomas that are not included in the CDC surveillance definition, and listed them separately. The commenters pointed out that we were, in effect, saying that any individual who has HIV infection and any lymphoma would have an impairment that meets our listing and that there was, therefore, no need to list lymphomas in three separate places as we had proposed (i.e., in proposed adult Listings 14.08A6, I, and J, and childhood Listings 114.08A6, H, and I).

Many commenters pointed out that it was also unnecessary, and could be unfair, to provide specific requirements for the diagnosis of each manifestation of HIV infection in the listings. They pointed out that, at a minimum, we could summarize our criteria for establishing the existence of HIV infection and its manifestations in the prefaces to the listings; i.e., 14.00 and 114.00. (They also offered comments about our rules for establishing these findings, many of which we adopted, and which we describe later in this preamble.)

In the final adult rules, therefore, we combined the criteria in proposed Listing 14.08A with the criteria in proposed Listings 14.08B-L and organized them first by etiology of infection (final Listings 14.08A-D) and then by type of manifestation, regardless of etiology (final Listings 14.08E-N). We also removed the specific documentation requirements for each disease or manifestation from the listings and consolidated all documentation requirements with the general discussion of documentation in final 14.00D3 and D4. We removed duplicative language from the listings and clarified the standards established for many of the diseases. We made the same kinds of changes to the childhood listings in 114.00 and 114.08.

Manifestations of HIV Infection in Women

In response to public comments, final Listing 14.08 now also includes specific criteria for most manifestations of HIV infection that are common in women. Because these conditions are now included in the listings, we deleted the discussion of specific conditions common in women that we proposed in 14.00D of the NPRM, although we retained and augmented that section's general discussion of women's issues in final 14.00D5. The final listing, which we describe in greater detail below, explicitly mentions conditions common to women and provides criteria by which we will determine whether a given manifestation is of listing-level severity. We provide specific responses to the many comments on this issue in the public comments section of this preamble.

Listings 14.08M, 114.08L and 114.08M: The Functional Criteria

We received many public comments on the functional criteria in proposed Listings 14.08M, 114.08L, and 114.08M, the majority of which were unfavorable. The proposed rules had listed several possible manifestations of HIV infection (for example, meningitis, Kaposi's sarcoma, mucosal candidiasis, and oral hairy leukoplakia), and clinical and laboratory findings (for example, anemia, fever, and weight loss) that were not listed as stand-alone medical manifestations but that, in conjunction with functional restrictions, could establish listing-level HIV infection.

The commenters asked us to delete or substantially revise the rules for a number of reasons. Many commenters asked us to delete the rules employing functional criteria because they thought that the proposed medical manifestations were sufficient in themselves to establish listing-level disability. Many of these commenters pointed out that we had already incorporated indicators of medical severity by requiring the conditions in proposed Listings 14.08M2, 114.08L1, and 114.08M2 to be "persistent and/or resistant to therapy," and by requiring a 2-month persistence of at least two of the medical manifestations in proposed Listings 14.08M3, 114.08L2, and 114.08M3. The commenters pointed out that to require functional limitations in addition to these medical requirements seemed excessive and unfair. For instance, a number of commenters thought that diarrhea that had already persisted for 2 months and was unresponsive to treatment should be enough to establish disability, and need not be associated with another medical manifestation and functional limitations.

Some commenters thought that the mere existence of some of the manifestations (for example, pulmonary tuberculosis or vulvovaginal candidiasis) was in itself sufficient to establish disability in HIV-infected individuals and that no indicator of severity—either medical or functional—was necessary. Others offered suggestions for tying some of the manifestations to a test of functioning while making some of the other manifestations stand-alone medical listings without functional criteria. Some offered suggested criteria for describing medical severity for the stand-alone manifestations. The thrust of these suggestions was toward providing medical criteria specific to each different manifestation instead of the more general criteria for persistence

and unresponsiveness to treatment we had proposed.

With regard to the functional criteria themselves, most of the comments addressed the adult criteria in proposed Listing 14.08M. Many people said that the criteria were inappropriate and too difficult to meet. Some said that the criteria were originally intended for the evaluation of mental impairments and, therefore, could not be used to evaluate physical impairments, especially HIV infection. (Of these comments, many singled out the criterion of marked limitation of social functioning in proposed Listing 14.08M4b as being especially inapt.) Some thought that this was the first time we had employed functional criteria in the physical listings and said that we should not start with HIV infection.

Many commenters who thought that we should not have the functional criteria at all recommended that, if we must have functional criteria, we should revise the proposed rules so that meeting only one of the functional criteria—instead of two, as we had proposed—would suffice. Some thought that we should incorporate into the listing the two functional criteria we formerly used in our manual instructions, believing the old criteria to be less stringent than the proposed criteria. Some thought that we should revise the language of the functional criteria to make them more specific to HIV infection. Finally, many commenters said that our definitions of the term "marked" in proposed 14.00D with respect to each of the functional criteria set too severe of a standard.

We address the individual comments, and other related comments, in more detail in the public comments section of this preamble. Notwithstanding the comments, however, we have decided to retain listings that permit a showing of disability based on an individualized assessment of the impact of a person's HIV infection on his or her functioning in the broad areas of activities of daily living, social functioning, and concentration, persistence, or pace. However, we have also extensively revised the rules in response to the comments, and we believe that we have addressed many of the commenters' concerns.

We have addressed most of the concerns by adding listings that provide stand-alone medical criteria for most of the manifestations that were in proposed Listings 14.08M, 114.08L, and 114.08M. The medical criteria in the new stand-alone medical listings are specific to the listed manifestations. (For reasons we explain later, we have deleted the criterion for a CD4 (T4) lymphocyte count; therefore, there are no provisions in the final rules corresponding to proposed Listings 14.08M1 or 114.08M1.) By doing this, the functional criteria become simply an alternative way that individuals with most of the manifestations in the proposed rules can establish that they are disabled under the listings, instead of the only way.

In final adult Listing 14.08N, we now describe episodic manifestations. Listing 14.08N thus includes individuals who suffer from the same manifestation periodically but who are not necessarily continuously ill; whose manifestations, though continuously present, wax and wane in severity; or who suffer episodes of different manifestations that, taken together, demonstrate listing-level severity. Final childhood Listing 114.08O (which replaces proposed Listings 114.08L and 114.08M and applies to children from birth to the attainment of age 18) includes all manifestations of HIV infection (both episodic and continuous). Both new listings include people who have manifestations that are listed in the preceding medical listings but that do not meet the medical criteria, as well as manifestations that are not listed in final Listings 14.08A–M and 114.08A–N.

For reasons we explain below, the final adult listing, 14.08N, now includes only three functional criteria—(1) activities of daily living; (2) social functioning; and (3) concentration, persistence, and pace—and an individual need only establish marked limitations in one of the three areas to show an impairment that meets this listing. We have also revised our definitions of the term "marked" to clarify its applicability in HIV cases.

As we analyzed the comments, we realized that many of them were based on misconceptions about both the proposed rules and how we evaluate disability in general. Although we agreed with those commenters who expressed concerns that some of the conditions tied to the functional criteria in the proposed rules need not be so tied—and we made appropriate changes—we could not agree with those commenters who stated that the proposed functional criteria would be used to deny disability benefits or to disqualify some individuals.

Our disability evaluation policies do not permit denial of disability benefits on the basis that an individual's impairment(s) does not impose functional limitations at the listing level. We use the listings at the third step of our sequential evaluation processes for adults and children to "screen in," i.e., allow, individuals who are clearly disabled. (See §§ 404.1520, 416.920, and 416.924 for our rules on the sequential evaluation processes.) Under these processes, if an individual's impairment(s) is "severe" but does not meet or equal in severity any listing, we reach no conclusion at all about disability. Rather, we move on to the next step of the process and look at other factors to resolve that ultimate issue. We may use the criteria described in these listings to find that an individual is disabled, but we do not use the criteria to find that an individual is not disabled.

Therefore, the nature of this process is such that any time we include a new listing in appendix 1, no matter what the requirements, this is an advantage to an individual who applies for disability benefits because it adds a new way we may find the individual disabled, without adding a new way to find him or her not disabled.

As in the proposed rules, the functional criteria in these final rules serve a very important purpose—to provide individuals who have what may at first seem like less severe manifestations of HIV infection, or combinations of impairments that would not fit neatly into any of the purely medical listings, with a listing their impairments can meet. The listing, therefore, provides claimants with every opportunity to be found disabled as early in the evaluation process as possible. We believe that the commenters who argued against the functional criteria did not understand this purpose and misinterpreted what we intended to be a very beneficial part of the listing. This was partly because we did not explain it clearly enough. But it was also because—as the commenters correctly pointed out—we need not have limited the functional criteria only to certain specific manifestations, that some of the proposed manifestations were in themselves disabling, that some of the manifestations in the listing were more medically serious than others, and that we could have provided alternative medical criteria for some of the manifestations we had proposed.

The following changes respond to the commenters' concerns that some HIV-related medical conditions were included in the listings only in relation to functional standards. At the same time, they retain the flexibility we need for making favorable disability determinations at the listing level using functional criteria.

1. Stand-Alone Medical Criteria

We reviewed each of the medical conditions that were tied to functioning in proposed Listings 14.08M, 114.08L, and 114.08M and attempted to draft a medical description of each condition, at listing-level severity, that did not include a functional evaluation. In doing so, we heeded comments pointing out that some of the medical requirements in proposed Listing 14.08M were already extremely severe without the functional criteria. We did not, however, agree with those commenters who thought that the mere existence of each of the manifestations should be enough to establish listing-level severity. Most of the manifestations we had proposed in Listing 14.08M can vary in severity, responsiveness to treatment, and their impact on functioning. Therefore, we believe it is imperative that each manifestation be described by criteria that define listing-level severity if it is to be a stand-alone medical listing.

We were able to draft stand-alone listings for all the manifestations included in proposed Listings 14.08M2, 114.08L1, and 114.08M2: Pulmonary tuberculosis in final Listings 14.08A1 and 114.08A1; Kaposi's sarcoma in final Listings 14.08E2 and 114.08E2; peripheral neuropathy in final Listings 14.08H and 114.08H; and pneumonia, bacterial or fungal sepsis, meningitis, septic arthritis, and endocarditis in final Listings 14.08M and 114.08N. We were also able to include most of the conditions included in proposed Listings 14.08M3, 114.08L2, and 114.08M3: Mucosal candidiasis, including vulvovaginal candidiasis, and dermatological conditions in final Listings 14.08B2 and 14.08F and 114.08B2 and 114.08F; Herpes zoster in final Listings 14.08D3 and 114.08D3; anemia, granulocytopenia, and thrombocytopenia in final Listings 14.08G and 114.08G; diarrhea in final Listings 14.08J and 114.08J; and sinusitis in final Listings 14.08M and 114.08N. In some cases, the new criteria consist of a reference to another listing (e.g., final Listing 14.08G, anemia, as described under the criteria in 7.02). In other cases, the criteria are new (e.g., final Listing 14.08D3, Herpes zoster either disseminated or with multidermatomal eruptions, that are resistant to treatment).

We did not include fever, weight loss, and oral hairy leukoplakia as stand-alone listings. Fever and weight loss are not medical conditions in themselves, but the observable outcome—i.e., signs—of medical conditions. We believe that there are few people whose sole manifestation of HIV infection is a persistent, high fever without any other observable problems; indeed, the individual will likely have other signs and symptoms that may be evaluated together with the fever. Moreover, any stand-alone medical listing that tried to describe listing-level fever would have to be set at a very high level, would rarely apply, and would be subject to the same criticism that we received about some of the manifestations in the proposed functional listings, i.e., that it is too severe. We believe, therefore, that it would be better to evaluate the few individuals who suffer only from persistent fever (of any level) in terms of their functioning; such individuals may be fatigued and weak, have difficulty doing their daily chores, and may even be confined to their homes or even to bed. Final Listings 14.08N and 114.08O also allow for the possibility that the individual's fever is not constant, but recurrent, which we believe is a more realistic possibility than continuous high fever. To underscore these points, we have included fever among the examples of symptoms and signs that may result in the functional limitations in the listing.

Similarly, weight loss is already inherent in the listings for HIV wasting syndrome and growth disturbance (final Listings 14.08I and 114.08I) as well as the aforementioned new listings for diarrhea. Individuals who have unexplained weight loss or weight loss because of loss of appetite may have impairments that are medically equivalent to one of these listings or the new functional listings, or to listings in other body systems; even those whose weight loss is not as serious as in final Listings 14.08I and 114.08I may have symptoms of fatigue and weakness resulting in listing-level functional restrictions. We have also included weight loss among the examples of signs and symptoms that may result in the functional limitations of the listing.

We did not include oral hairy leukoplakia as a stand-alone medical condition because it is generally an asymptomatic condition that may persist for a relatively long time without interfering with the individual's functioning. We believe, therefore, that each case will have to be evaluated to determine the particular effects of the manifestation on the individual under final Listings 14.08N or 114.08O. We also did not include from the proposed childhood rules parotitis, or the clinical findings of splenomegaly, hepatomegaly, and generalized lymphadenopathy. These conditions and clinical findings can vary greatly from child to child in their severity, medical significance, and impact on a child's ability to function. Because of this, it is not possible to define with solely medical criteria, except in the most extreme terms, a level of severity for these conditions and clinical findings that would interfere with most children's ability to engage in age-appropriate activities to the required degree.

Final Listings 14.08N and 114.08O do not list specific impairments. We made this change partly in response to comments suggesting many other possible manifestations of HIV infection for inclusion in the listing and partly because it is logical. We decided that instead of expanding the list of manifestations, we could respond to the commenters' concerns by abandoning the finite list of HIV-related manifestations and referring instead to "manifestations of HIV infection" in general. This allows for consideration of any manifestations, whether identified in the listing or not. We have also added discussions to final 14.00D8 and 114.00D8, the sections of the prefaces that describe the functional criteria, explaining that these listings may be used not only to evaluate manifestations of HIV infection that are not included in Listings 14.08A–M and 114.08A–N, but to evaluate manifestations that are listed in, but do not meet the criteria of, those listings.

2. The Functional Criteria

Many commenters expressed concern that the functional criteria in proposed Listing 14.08M were based on the functional deficits described in the mental impairment listings for adults in 12.00 of the listings. The commenters were concerned that these criteria, therefore, only related to individuals with mental disorders and were not appropriate measures of severity in the case of individuals with HIV infection. We do not agree. Although adjudicators are most accustomed to applying the functional criteria in 12.00 in the context of mental impairments, those criteria describe broad areas of functioning that are relevant to any individual's ability to work. It does not matter, for example, whether an individual's ability to perform activities of daily living is restricted because of memory loss or hallucinations, or whether it is because of fatigue, headaches, or weakness resulting from a manifestation of HIV infection. In either event, the ability to perform the tasks is compromised.

Nevertheless, we realized from the comments that the proposed rules may not have made application of the functional criteria sufficiently specific

to the evaluation of HIV-related impairments. Therefore, we modified proposed Listing 14.08M to more clearly reflect our original intent, which was to expand the way we assess the severity of HIV-related impairments at the listing level beyond the use of strict medical criteria by using broad functional criteria. We had hoped to include in the listings (via proposed Listing 14.08M3) a group of individuals whom we believed would be very difficult to describe in strictly medical terms—individuals who become ill then improve, only to repeatedly become ill again, either with the same manifestation of HIV infection or with different manifestations.

Based on some commenters' questions about the applicability of the proposed functional criteria to physical disorders, we also realized that proposed paragraph 14.08M4d, repeated episodes of decompensation, was not really a measure of functioning at all, but a description of what we were trying to address in this listing. Unlike its purpose in the mental listings (where decompensation can be a measurement of an individual's ability to tolerate stress), when applied to HIV-related illnesses the criterion measured the persistence and frequency of episodes of manifestations of HIV infection; in effect, it distinguished between individuals who develop and recover from only one or two isolated manifestations of HIV, and those who have a pattern of repeated episodes of illness.

Therefore, we removed proposed Listing 14.08M4d from the list of functional criteria, modified it to make it more specific to HIV, and used it as the introductory criterion for final Listing 14.08N. The final listing is for the evaluation of individuals who have repeated manifestations of HIV infection. We also revised the criterion in response to commenters who pointed out that the requirement in proposed paragraph 14.08M4d for the episodes to occur 3 times a year or once every 4 months and to last for at least 2 weeks was unnecessarily inflexible. In the third paragraph of 14.00D8 we have retained the provision that the conditions may occur on an average of 3 times a year, or once every 4 months, and each last at least 2 weeks, and at the same time we provide additional flexibility. Specifically, we now provide that the episodes may also last for less than 2 weeks and occur substantially more frequently than 3 times a year or every 4 months, or that they may occur less frequently than 3 times a year or once every 4 months but last substantially longer than 2 weeks each time.

In response to commenters who asked us to include criteria for some of the more common symptoms and signs of individuals who do not have CDC-defined AIDS, we adopted and expanded language from Listing 14.02B, the listing for systemic lupus erythematosus, about which we received literally thousands of favorable public comments. The language in final Listing 14.08N explains that disability under this listing will result from "significant, documented, symptoms or signs (e.g., fatigue, fever, malaise, weight loss, pain, night sweats)" that cause functional limitations. (Unlike Listing 14.02B, we do not provide that there must be both symptoms and signs in this listing. The constitutional symptoms and signs in Listing 14.02B help to define the syndrome of systemic lupus erythematosus and its severity. In contrast, the criterion in final Listing 14.08N includes any symptoms or signs that can be the cause of the functional limitations because the existence of the impairment has already been established.)

We retained the three remaining functional criteria as the standards for measuring functional deficit. Having more accurately described the individuals to whom we intend the listing to apply, we then agreed with commenters who stated that marked functional restrictions in any one of the categories would be sufficient to demonstrate listing-level severity. Consequently, final Listing 14.08N requires marked limitations in only one of the three broad areas of functioning.

We want to reiterate, however, that we retained a revised version of the proposed Listing 14.08M4d criterion in the final listing. Our intention in modifying and relocating the criterion is to better express our original intent and to recognize that the proposed fourth criterion was not a "functional" criterion in this listing but a medical one. We believe that the result is an improvement over the proposed rule. Individuals with less serious manifestations than several of those we had proposed in Listing 14.08M2 and those who have only one of the manifestations we had proposed in Listing 14.08M3 will now be able to show that they have impairments that meet this listing. Furthermore, even though there is, in effect, no change in the functional severity level of this listing for those people whose impairments would have satisfied one of the criteria in proposed Listing 14.08M4a (activities of daily living), 14.08M4b (social functioning), or 14.08M4c (concentration, persistence, or pace) and the criterion in 14.08M4d—thus satisfying two of the proposed "functional" criteria—we have made the functional criteria more accurate measures of an individual's true functional limitations. No claimant will have to establish that he or she has marked limitations in two of the three true areas of functioning about which so many of the commenters were concerned. In this way, by requiring that a claimant show marked limitations in only one of the three functional areas, the area of social functioning, about which many commenters were concerned, becomes only one way among three available to establish disability at the listing level and can only benefit claimants by providing another area in which to document functional restrictions. However, if social functioning is not markedly limited, a claimant may still show listing-level impairment by demonstrating marked limitations in one of the other areas, activities of daily living or concentration, persistence, or pace.

3. The Childhood Functional Criteria: Final Listing 114.08O

We also did not adopt the recommendations of commenters who urged us to eliminate the functional criteria for children in proposed Listings 114.08L and 114.08M. These commenters noted that our regulations, in § 416.926a, already allow for a finding of equivalence when the functional limitation(s) resulting from a child's impairment(s) is the same as the disabling functional consequences of a listed impairment. Therefore, they did not believe that it was necessary to restate this previously established policy within the context of this listing.

Although we agree that proposed Listings 114.08L and 114.08M were based on a principle similar to functional equivalence, and we agree that most or all children whose impairments meet the criteria of proposed Listing 114.08L or 114.08M would have been found disabled based on the functional equivalence rule, we did not want to take the chance that our rules would be misinterpreted as being more advantageous to adults. In addition, the concept of functional equivalence applies only to childhood SSI claims under title XVI of the Act. Even though SSI claims constitute the great majority of childhood disability applications, it is possible for individuals under age 18 to apply for disability benefits (both as disabled minor children and as workers) under title II. The rules on functional

equivalence do not apply in these cases, and such children could be disadvantaged by removal of the rule.

We did not change the proposed childhood functional criteria the same way we changed the adult criteria. The adult criterion we changed (repeated episodes of decompensation) is not applicable to the evaluation of functioning in children. Further, the childhood functional criteria vary depending on the age of the child. We concluded that the functional criteria in 112.00ff represent the best way to measure broad functional restrictions in children. Consequently, we retained the proposed childhood functional criteria (which cross-refer to Listings 112.02 and 112.12).

4. CD4 (T4) Count

Another change in the final listings is the elimination of a specific criterion for CD4 lymphocyte count. Proposed Listings 14.08M1 and 114.08M1 used a CD4 count of less than or equal to 200 cells/mm^3 as a measure of the severity of immunodeficiency. A number of public commenters questioned why we used this particular criterion to evaluate impairment severity. Some said that individuals with higher CD4 counts than 200 could be just as functionally limited, and suggested that we use a higher CD4 count. Some commenters said that a CD4 count of 200 should, in and of itself, be sufficient to establish listing-level severity, without the need to show functional restrictions. Others stated that using a CD4 count is not appropriate at all because it is not a good indicator of impairment severity.

In light of these comments, we reevaluated the listing and realized that, while a low CD4 count (and especially a rapidly declining CD4 count) is an indicator of a compromised immune system and a valuable tool for determining when to institute prophylactic treatment, there is no consistent correlation between a given CD4 count and how or whether an individual is functionally impaired by HIV infection. Individuals with high CD4 counts may be quite severely limited, while others with very low counts may be able to continue normal activities. One individual who commented on our proposed rules related his own story of living with HIV infection, noting that he continued to feel well and to work until his CD4 count was well below 100. He argued that to base our rules on such an unreliable indicator would be to unfairly stigmatize individuals who are able to function well despite low CD4 counts.

Therefore, we decided not to include a specific CD4 lymphocyte count as a criterion in the listings. For informational purposes, we have also included in final 14.00D3, 14.00D4, and 114.00D4 general statements about the role CD4 counts play in disease susceptibility.

In final 114.00D3, we also retained guidance that permits a finding of the existence of HIV infection in very young children based on a CD4 count. We did this because these tests are helpful in making the difficult diagnosis of HIV infection in infants. However, based on a commenter's suggestion, which was consistent with other information we received, we extended this provision (which we had proposed to apply to children up to 15 months of age) to cover children up to 24 months of age.

Provisions of the Final HIV Rules

14.00D Human Immunodeficiency Virus (HIV) Infection

Final 14.00D introduces the subject of HIV infection and lists some of the information that is important in documenting and evaluating the disease. The section explains what is acceptable evidence of HIV infection and its manifestations. It provides definitions of some of the terms we use in the listings, including the terms associated with the functional listing, 14.08N.

We extensively revised final 14.00D, both substantively and technically, based on public comments. In place of the 23 paragraphs we had proposed for 14.00D in the NPRM, the final rules are now divided into 8 numbered sections. We have also deleted repetitious language and several paragraphs that are no longer necessary in 14.00D because we have included the impairments they described in Listing 14.08.

14.00D1 HIV Infection

Final 14.00D1, which describes "HIV infection" and "AIDS," corresponds to the first paragraph of proposed 14.00D. We revised the final language to emphasize that an individual need not have CDC-defined AIDS to have an impairment that meets or is equivalent in severity to, the listed impairments in final Listing 14.08.

14.00D2 Definitions

Final 14.00D2 is a new section we added in response to comments asking us to define some of the terms in the listing. The final section defines the terms "resistant to treatment," "recurrent," "disseminated," and "significant involuntary weight loss." It states that the first three terms have the same general meaning as used by the medical community, but cautions that the precise meaning of the terms will necessarily vary depending on the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and other relevant circumstances. We then provide definitions of the three terms.

For the fourth term, "significant involuntary weight loss," which is used in Listing 14.08I, we explain that the term does not describe a specific minimum amount or percentage of body weight. We still provide that we always consider an involuntary weight loss of 10 percent of baseline to be significant. However, in response to a comment, we now also provide that loss of less than 10 percent of body weight may be significant, especially in a smaller person. To illustrate the principle, we provide examples of two women, showing when weight loss of less than 10 percent of body weight may and may not be significant.

14.00D3 Documentation of HIV Infection; 14.00D4 Documentation of the Manifestations of HIV Infection

Final 14.00D3 provides our standards for documenting the existence of HIV infection and final 14.00D4 provides our standards for documenting its manifestations. These sections correspond to the provisions we had proposed in the third through seventh paragraphs of proposed 14.00D. However, in response to many comments, we extensively revised these sections.

We revised final 14.00D3 to explain that, even though the medical evidence must include documentation of the existence of HIV infection (which is required by the statute), documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice. We adopted the additional language about generally acceptable methods of diagnosis from comments pointing out that many claimants will not have undergone the kinds of testing we had described. Many commenters noted that clinicians do not always perform laboratory testing for HIV because the existence of HIV infection can be inferred, or presumed, based on the existence of certain opportunistic infections. These commenters pointed out that even the proposed rules recognized this practice. Some commenters also pointed out that in many instances where claimants have been tested for the HIV, the test results

will not be available because of privacy concerns.

The section is then divided into two parts: 14.00D3a, which describes how HIV infection may be diagnosed definitively, and 14.00D3b, which describes how HIV infection may be diagnosed presumptively—that is, be acceptably documented without the definitive laboratory evidence described in 14.00D3a. In response to comments with which we agreed, we clearly state in final 14.00D3a that when laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing. We also clarified the language to explain why the results of a positive ELISA screening test are ordinarily verified by a more definitive test for HIV antibodies. In final 14.00D3a(ii), we combined the tests specifically for HIV antigen into one category, and included the laboratory tests named in the proposed listing as examples. We also added cerebrospinal fluid specimens to this category of clinical tests to make the adult rules consistent with the childhood rules; even though such testing is rare in adults, it is not unheard of. In response to a comment, we expanded final 14.00D3a(iii), which was formerly the fourth example in the fourth paragraph of proposed 14.00D, to include other tests that are acceptable methods of detecting HIV and consistent with the prevailing state of medical knowledge.

The third paragraph of final 14.00D3a has been adapted from the second sentence of the third paragraph of proposed 14.00D. In response to comments, and for reasons we have already explained above in the summary of revisions to Listing 14.08N, we clarify that, even though the level or rate of decline of CD4 count correlates with the extent of immune depression, a reduced CD4 count alone does not definitively diagnose the presence of HIV infection or provide information about the severity or functional effects of HIV infection; additional documentation will always be necessary.

Final 14.00D3b describes when documentation of HIV infection is possible without definitive laboratory evidence. It states that HIV infection may be documented by medical history, clinical and laboratory findings, and diagnoses shown in the medical evidence, provided that the documentation is consistent with the prevailing state of medical knowledge and clinical practice, and is consistent with the other evidence. As an example, it states that HIV infection will be documented if the individual has an opportunistic disease predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease. This is a provision we moved from proposed Listing 14.08A as part of our simplification of the listing.

Final 14.00D4 explains the documentation requirements for opportunistic diseases and other manifestations of HIV infection. It is structured in the same way as final 14.00D3, with a section (final 14.00D4a) describing definitive methods of diagnosis, and a section (final 14.00D4b) describing other acceptable methods of diagnosis. It notes that every reasonable effort should be made to obtain whatever specific laboratory evidence is available. If only hospitalization summaries or treating physician reports are available, this evidence should include details of the clinical findings and the results of the diagnostic or microscopic studies.

As in final 14.00D3, we have added guidance that documentation of manifestations of HIV infection may be by laboratory evidence or documentation which is consistent with the prevailing state of medical knowledge and clinical practice, and consistent with the other evidence. We have also included in final 14.00D4a a discussion of the relevance of CD4 counts, which cross-refers to the discussion in 14.00D3a.

Final 14.00D4b discusses other acceptable documentation of opportunistic diseases and other manifestations of HIV infection. In response to comments, with which we agree, we have clarified the explanation of how opportunistic diseases and manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnoses indicated in the medical evidence. Though a diagnosis of opportunistic disease or HIV manifestation may not be supported by a definitive test, the diagnosis is acceptable documentation provided that it is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. As a point of clarification, we have also added a discussion about cytomegalovirus (CMV) disease, which presents special documentation issues. Because the CMV is an organism that is present in many individuals who are not ill, a positive serology in itself does not confirm that a person has CMV disease. Therefore, in this circumstance, we require confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice. One such method, which we single out in the new paragraph, is diagnosis by an ophthalmologist of chorioretinitis caused by CMV.

14.00D5 Manifestations Specific to Women

The two paragraphs of final 14.00D5 replace the tenth through twelfth paragraphs of proposed 14.00D and discuss the evaluation of HIV infection in women. We shortened the discussion of manifestations specific to women contained in proposed 14.00D because we have incorporated the specific diseases mentioned in the proposed prefatory language directly into final Listings 14.08A5 (pelvic inflammatory disease), 14.08D2 (genital herpes), and 14.08F (vulvovaginal candidiasis) as stand-alone medical listings.

In final 14.00D5, we have retained the basic guidance from the NPRM for evaluating HIV infection. Both paragraphs of final 14.00D5 continue to alert adjudicators to give careful consideration and scrutiny to the medical evidence when evaluating HIV infection and its manifestations in women.

The first paragraph of final 14.00D5 corresponds to the tenth paragraph of proposed 14.00D. We have revised it slightly following the publication of the NPRM because most women with severe immunosuppression do, in fact, exhibit the same kinds of manifestations that men do, and the HIV infection need not necessarily be in the end stages for this to happen. However, in addition to these manifestations, HIV infection does have effects in some women that are different from those in men with the disease, sometimes by increasing the frequency and resistance to treatment of conditions, including gynecologic conditions, that occur in women who do not have HIV infection. We have, therefore, revised the last two sentences of the paragraph to say that HIV infection may have different manifestations in women than in men, and that adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions that are both specific to women and common in the female population, but may be more severe because of the HIV infection.

The second paragraph of final 14.00D5 includes material that was in the remaining two paragraphs of the NPRM and explains the foregoing principles in more detail. Because we have incorporated the most important conditions specific to women directly into the listing, we now no longer state that gynecologic conditions may result only in equivalence determinations under the listings. Instead, we provide

that manifestations of HIV infection in women may be evaluated under the specific listing criteria (such as Listing 14.08E, which explicitly lists cervical cancer), under an applicable general listing category (such as final Listing 14.08A5), or under final Listing 14.08N (which considers the specific impact of an impairment(s) that does not otherwise meet a listing on the individual's ability to function). We believe that final Listing 14.08N will be especially useful in cases of women who do not suffer from a continuous, listing-level manifestation of HIV infection, but suffer exacerbations and remissions of their manifestation, or a number of consecutive different manifestations.

14.00D6 Evaluation

Final 14.00D6 gathers under one heading the three paragraphs of the NPRM that addressed issues of evaluation: the second, thirteenth, and last paragraphs of proposed 14.00D.

We consolidated the repetitive language in these paragraphs but retained the discussion of the need to evaluate the impact of all impairments in individuals with HIV infection. We changed the second sentence of the first paragraph of final 14.00D6 (the second paragraph of proposed 14.00D) to emphasize that equivalence to other listings must be considered in evaluating an individual's HIV disease or condition. We also revised the subsequent discussion, which was adapted from the thirteenth paragraph of proposed 14.00D, but which was confined to mental manifestations in the proposed rules. The final rule refers to both mental and physical impairments and removes any implication that we did not consider that mental signs and symptoms could be manifestations of HIV infection.

We also explain that some individuals with HIV infection may have impairments that are less than listing-level severity, but still may be disabling. Evaluation of these cases should proceed through the final steps of the sequential evaluation process.

14.00D7 Effect of Treatment

Final 14.00D7 is an expanded version of the fourteenth paragraph of proposed 14.00D. It discusses the need to evaluate the impact of treatment in individuals with HIV infection. In response to public comments, with which we agreed, we clarified the first and second sentences of the proposed paragraph by specifically referring to both the potential benefits and the potential adverse effects of treatment. We expanded the explanation dealing with individual responses to treatment to further emphasize the importance of evaluating adverse or beneficial consequences of treatment on a case-by-case basis. We also added language that explains why it is important to know that the effects of treatment may be temporary or long-term as a reminder that any decision regarding the impact of treatment should be based on a sufficient period of treatment for an accurate and realistic assessment.

14.00D8 Functional Criteria

Final 14.00D8 discusses the functional criteria contained in Listing 14.08N. We extensively modified the proposed language in response to comments and to conform with the changes we made in the functional criteria of final Listing 14.08N, already described above.

The first paragraph of final 14.00D8, together with the third paragraph, replaces the twenty-second paragraph of proposed 14.00D, which had described the fourth area of functioning, repeated episodes of deterioration or decompensation in work or work-like settings. This paragraph now explains that the provisions of final Listing 14.08N apply both to manifestations that are listed in Listings 14.08A through M but that do not meet those listings, and to unlisted manifestations. In this way, instead of using a finite list of manifestations as we had proposed, the provision now applies to any type of manifestation.

The second paragraph stresses important considerations in the evaluation of HIV infection. It requires an assessment of the full impact of signs, symptoms, and laboratory findings on an individual's ability to function, and mentions the following specific factors: Symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations, or periods of exacerbation and remission; and the functional impact of treatment, including the side effects of medication.

The third paragraph of final 14.00D8 (as well as the first paragraph) replaces the twenty-second paragraph of the NPRM. In the third paragraph, we provide the definition of the term "repeated" as we use it in Listing 14.08, which we have already explained above. Our intent is to provide as much flexibility as possible to include "repeated" manifestations, provided that the episodes are of sufficient frequency or duration as to be at the listing level.

The fourth through eighth paragraphs of final 14.00D8 replace the seventeenth through twenty-first paragraphs of 14.00D in the NPRM. Inasmuch as we require an individual to satisfy only one of the three functional criteria now in Listing 14.08N, we have revised the fourth paragraph accordingly. We have added language that reminds adjudicators that the functional restrictions may result from the impact of the manifestation on mental or physical functioning or both. We have also moved into this paragraph the language in paragraphs 18 through 21 of the NPRM about the importance of considering symptoms (such as depression, fatigue, or pain) and the side effects of medication when assessing functioning.

In response to comments about the seventeenth paragraph of the NPRM, now the fifth paragraph of final 14.00D8, we revised the general guidance definition of the term "marked." The revisions now state that a marked limitation does not represent a quantitative measure of the individual's ability to do an activity for a certain percentage of the time. We also state plainly, in response to many comments, that an individual with a marked limitation is not totally precluded from performing an activity and that the term "marked" does not imply that the individual is confined to bed, hospitalized, or in a nursing home. This has always been our intent in the rules; our reason for including the statement that "marked * * * means more than moderate, but less than extreme" is to illustrate that there is a level of limitation higher than the "marked" level, a situation that would not be possible if "marked" meant complete limitation.

In the sixth, seventh, and eighth paragraphs of final 14.00D8, we revised the descriptions of the three general areas of functioning to make them more specific to people who have HIV infection and to respond to concerns in the public comments. For instance, in the seventh paragraph, we now explain that an individual may be able to communicate with close friends and relatives yet still have a marked limitation of the ability "to engage in social interaction on a sustained basis." This, too, has always been our intent. The ability to communicate effectively with close family and friends is not necessarily indicative of an individual's ability to maintain social contact independently or in a work setting.

Even though all of the foregoing information is basic to the use of the rules we proposed in the NPRM, and would have been understood by our adjudicators, we have included it in the preface to the final listing to make our policy clearer in the regulations.

Finally, we deleted from the preface the material that was in the seventh, eighth, and ninth paragraphs of proposed 14.00D. The seventh paragraph described documentation requirements for Pneumocystis carinii pneumonia, and has been superseded by the new discussions on documentation of the manifestations of HIV infection at the listing-level. We incorporated the provisions of proposed paragraphs eight and nine directly into their respective listings (14.08H1 for HIV encephalopathy, and 14.081 for HIV wasting syndrome).

14.08 Human Immunodeficiency Virus (HIV) Infection

This new listing adds to the regulations our criteria for evaluating HIV infection at the listing level. The listing includes a range of opportunistic diseases, cancers, and other manifestations that are indicative of listing-level severity in an individual with HIV infection. Specific manifestations that are considered indicative of listing-level HIV infection are in final Listings 14.08A–M, grouped by type (e.g., fungal infections, bacterial infections, malignant neoplasms) for ease of reference. Final Listing 14.08N includes any manifestations of HIV infection that cause listing-level functional limitations.

Final Listing 14.08 is significantly different from the proposed listing. We reorganized and changed the proposed listing in the following ways:

To improve the clarity of the final listing criteria, we deleted specific documentation requirements from each HIV manifestation listed in 14.08 and retained only one general cross-reference to the comprehensive discussion of documentation requirements in final 14.00D3 (for documentation of the existence of HIV infection) and 14.00D4 (for documentation of the manifestations of HIV infection). Because we have included a discussion of opportunistic disease predictive of a defect in cell-mediated immunity that document HIV infection in final 14.00D3, we have deleted proposed 14.08A.

14.08A Bacterial Infections

Final Listing 14.08A, Bacterial infections, includes the proposed listings that described bacterial infections. Thus, final Listing 14.08A1, Mycobacterial infection, includes proposed Listings 14.08A7, 14.08D, and 14.08M2b; final Listings 14.08A2, Nocardiosis, and 14.08A3, Salmonella bacteremia, were in proposed Listing 14.08F We combined the proposed listings for mycobacterial infections, which are a kind of bacterial infection, because we agreed with those commenters who pointed out that the proposed listings (except for 14.08M2b, Pulmonary tuberculosis) resulted in a finding of "meets" regardless of the kind of the mycobacterial infection. (We made a technical correction to the name of one of the three bacteria we listed as examples of causes of mycobacterial infections, M. avium-intracellulare.) We added pulmonary tuberculosis, resistant to treatment, in response to comments that asked us to create a stand-alone medical listing for this condition.

For the same reason, we added syphilis or neurosyphilis to final Listing 14.08A4, and required that the sequelae be evaluated under the criteria for the affected body system. We also added listing criteria for multiple or recurrent bacterial infections, such as pelvic inflammatory disease, in final Listing 14.08A5. The final listing includes criteria for hospitalization or intravenous antibiotic treatment as a measure of severity.

14.08B Fungal Infections

Final Listing 14.08B includes material originally proposed in Listings 14.08A and 14.08C. Final Listing 14.08B2, Candidiasis (at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal membranes; or involving the esophagus, trachea, bronchi, or lungs) combines the criteria of proposed Listings 14.08A1 and 14.08C1. Final Listings 14.08B3, Coccidioidomycosis, and 14.08B5, Histoplasmosis, were both in proposed Listing 14.08C. Final Listing 14.08B4, Cryptococcosis, was in proposed Listings 14.08A2 and 14.08C2; we have also added a reference to cryptococcal meningitis in partial response to the public comments asking us to list the criteria in proposed Listing 14.08M2 as stand-alone listings. (Other forms of meningitis are listed in final Listing 14.08M.) In response to comments, we added aspergillosis to 14.08B1 and mucormycosis to 14.08B6; neither of these manifestations was in the proposed listing.

14.08C Protozoan or helminthic infections

Final Listing 14.08C1 includes manifestations originally proposed as Listings 14.08A3 and 14.08B1 (both for cryptosporidiosis) and 14.08B4 (isosporiasis). In response to comments, we also added microsporidiosis to final Listing 14.08C1. Final Listing 14.08C2, for Pneumocystis carinii pneumonia, includes the manifestations that were in proposed Listings 14.08A8 and 14.08B2. In response to comments, we added extrapulmonary pneumocystis infection to final 14.08C2. Thus, the listing includes all infections with the Pneumocystis carinii organism. We listed both the pneumonia and the extrapulmonary infections (instead of a single description of Pneumocystis carinii infection) because pneumonia is such a common manifestation of HIV infection.

Final Listing 14.08C3, Strongyloidiasis, extra-intestinal, was proposed Listing 14.08B5. Final Listing 14.08C4, Toxoplasmosis, combines proposed Listings 14.08A10 and 14.08B3 into one listing.

14.08D Viral Infections

Final Listing 14.08D1, Cytomegalovirus disease, combines proposed Listings 14.08A4 and 14.08E1. The final criteria for cytomegalovirus disease include a cross-reference to the new discussion of documentation of the disease in 14.00D4, already described.

Final Listing 14.08D2, Herpes simplex, combines proposed Listings 14.08A5 and 14.08E2. We revised the language of those rules slightly for clarity, and divided the listing into three separate criteria. We added to final Listing 14.08D2a, mucocutaneous infection, examples of such infections that may result from Herpes simplex virus.

Final Listing 14.08D3 is a stand-alone medical criterion for Herpes zoster, formerly in proposed Listing 14.08M3h as an impairment that required limited functioning. The listing is met with either disseminated infection or with multidermatomal eruptions that are resistant to treatment. Final Listing 14.08D4, Progressive multifocal leukoencephalopathy, was in proposed Listings 14.08A9 and 14.08E3. We also added a new Listing 14.08D5 for viral hepatitis in response to the public comments.

14.08E Malignant Neoplasms

Final Listing 14.08E consolidates the two proposed listings for neoplastic diseases, Listings 14.08I and 14.08J, and proposed Listing 14.08A6 (which was for primary lymphoma of the brain in individuals less than 60 years old). In the final rules, we use the term "malignant neoplasms" instead of the term "neoplasms" (which was in the proposed rules) to more accurately reflect the nature of these disorders. In response to public comments pointing out that we considered all lymphomas associated with HIV infection to be disabling, we combined all types of lymphomas into one listing, 14.08E3. We now mention primary lymphoma of the brain, Burkitt's lymphoma,

immunoblastic sarcoma, other non-Hodgkin's lymphoma, and Hodgkin's disease only as examples. In response to numerous comments, we also added as Listing 14.08E2 stand-alone medical criteria for Kaposi's sarcoma, which was in the proposed functional listing, 14.08M2. Final Listing 14.08E2 recognizes that there is a range of severity to Kaposi's sarcoma and, therefore, provides specific criteria for extensive oral lesions, or involvement of the gastrointestinal tract, lungs, or other viscera, or involvement of the skin or mucous membranes as described in final Listing 14.08F, discussed below.

Final Listing 14.08E1, Carcinoma of the cervix, was proposed Listing 14.08J2. Final Listing 14.08E4, Squamous cell carcinoma of the anus, was proposed Listing 14.08J3.

14.08F Conditions of the Skin or Mucous Membranes

In response to numerous comments, we added a new Listing 14.08F to the final rules. The listing includes criteria for conditions of the skin or mucous membranes, including mucosal candida, such as vulvovaginal candidiasis (which we had proposed with functional criteria in Listing 14.08M3f) and persistent dermatological conditions, such as eczema or psoriasis (proposed with functional criteria in Listing 14.08M3i). We added to this listing examples, including condyloma caused by human papillomavirus and genital ulcerative disease. Because these conditions may range in severity, we have provided criteria for extensive fungating or ulcerating lesions not responsive to treatment. We also include a cross-reference to the skin listings in 8.00ff, in the event they might apply.

14.08G Hematologic Abnormalities

In response to comments, we have added a new final Listing 14.08G with stand-alone medical criteria for the HIV-related hematological abnormalities we had proposed to link with functional criteria (anemia, granulocytopenia, and thrombocytopenia) in proposed Listings 14.08M3a-c. The listing consists of cross-references to existing hematological listings as a measure of severity.

14.08H Neurological Abnormalities

In response to public comments, we have expanded the proposed listing for HIV encephalopathy (proposed Listing 14.08G) into a general listing category for neurological manifestations of HIV infection, final Listing 14.08H. Final Listing 14.08H1 combines the proposed listing for HIV encephalopathy (proposed Listing 14.08G) with its definition in the eighth paragraph of proposed 14.00D. We revised the description from proposed 14.00D to remove superfluous language. We changed the phrase "cognitive and/or motor dysfunction" to "cognitive or motor dysfunction" because either of these findings is sufficient to find that the listing is met; therefore, "and/or" was unnecessary. We also deleted the requirement that the dysfunction progress "over weeks and months in the absence of a concurrent illness." The phrase "over weeks and months" was unclear: If there had already been months of progression, it is self-evident that weeks would have also passed. Moreover, "weeks and months" is an imprecise standard. Similarly, "in the absence of a concurrent illness" is unnecessary because it speaks to the issue of documentation of the existence of the manifestation called HIV encephalopathy.

Final Listing 14.08H2 adds listing criteria for other neurological manifestations of HIV infection, including peripheral neuropathy, which was in proposed Listing 14.08M2. The impairments in final Listing 14.08H2 must be evaluated under the criteria for the neurological listings in 11.00ff.

14.08I HIV Wasting Syndrome

Final Listing 14.08I combines the proposed listing for HIV wasting syndrome (proposed Listing 14.08H) with its definition in the ninth paragraph of proposed 14.00D. We clarified the proposed language to more accurately reflect the criteria for wasting syndrome. We also corrected a typographical error in the proposed rule: We intended to require chronic diarrhea for 1 month, not 2 months as stated in proposed 14.00D.

14.08J Diarrhea

Final Listing 14.08J is new, and includes stand-alone medical criteria for evaluating listing-level chronic diarrhea, which we had proposed with functional criteria in Listing 1408M3j.

14.08K Cardiomyopathy

The final listing for cardiomyopathy in 14.08K now includes a cross-reference to the criteria in 11.04 of the neurological listings. This addition makes the criteria for HIV-related cardiomyopathy consistent with the criteria for cardiomyopathy in the listing of impairments for the cardiovascular system.

14.08L Nephropathy

We modified the proposed listing for nephropathy, proposed 14.08L, to cross-refer to the entire genitourinary system listings section, rather than to specific listings in keeping with similar revisions throughout these final rules.

14.08M

In 14.08M of the final listing, we combined the proposed listings criteria for pneumonia in 14.08M2a, bacterial or fungal sepsis in 14.08M2C, meningitis in 14.08M2d, septic arthritis in 14.08M2e, endocarditis in 14.08M2f, and radiographically documented sinusitis in 14.08M3k into a general group of HIV-related manifestations that are resistant to treatment and that alone meet the listing without consideration of functional criteria. In some cases, specific variants of these conditions are described in other listings (e.g., bacterial sepsis under final Listing 14.08A, cryptococcal meningitis under final Listing 14.08B4). Therefore, we specify that final Listing 14.08M applies only to these infections if they are not listed in 14.08A–14.08L.

14.08N Repeated Manifestations of HIV Infection

Final 14.08N contains criteria (from proposed Listing 14.08M) for evaluation of manifestations of HIV infection based on functional consequences. We have extensively revised the proposed listing, as discussed above.

114.00D Human Immunodeficiency Virus (HIV) Infection

As we have already explained, we added a new 114.00C, Allergies, growth impairments, and Kawasaki disease, to correspond to 14.00C of the adult rules. This required us to redesignate proposed 114.00C to final 114.00D, which also makes all of the final designations in the preface to the childhood rules parallel the adult rules. We also revised most of final 114.00D of the childhood rules in the same way as the adult rules. In place of the 17 paragraphs we had proposed in 114.00C, final 114.00D is now divided into 8 sections with the same headings and organization as in 14.00D, except that we have added references to children in the headings. Of course, we also revised the text as necessary to refer to children. Thus, final 114.00D1, HIV infection, is the same as final 14.00D1, except that we refer to children instead of adults.

Final 114.00D2, Definitions, is the same as final 14.00D2, except that it does not include a paragraph corresponding to the last paragraph of final 14.00D2. The last paragraph in final 14.00D2 defines the term "significant involuntary weight loss" as it is used in final Listing 14.08I. We did

not include a similar explanation in the childhood rules because final Listing 114.08I, Growth disturbance, contains three separate criteria for assessing weight loss in children and is, therefore, more precise than the adult rule.

In response to comments, we extensively revised the discussions in final 114.00D3, Documentation of HIV infection in children, and 114.00D4, Documentation of the manifestations of HIV infection in children. Except as noted below, these sections parallel final 14.00D3 and D4.

In final 114.00D, we have revised, clarified, and expanded the guidance in the fourth and fifth paragraphs of proposed 114.00C for establishing the existence of HIV infection in children. For reasons we explain in the public comments section of this preamble, we changed the proposed rules that referred to children up to the age of 15 months to apply to children up to the age of 24 months.

Final 114.00D3a(i) corresponds to the first category in the fourth paragraph of proposed 114.00C. In addition to revising the paragraph in the same way as the corresponding adult rule, we added a new first sentence to clarify that HIV infection is not documented in children under 24 months of age by antibody testing. Inasmuch as any kind of specimen (such as serum, lymphocyte culture, or cerebrospinal fluid) that contains HIV antigen definitively diagnoses HIV infection, we deleted the repetitive references to HIV antigens from the proposed rules (the second and third criteria in the fourth paragraph of proposed 114.00C and the first and second criteria in the fifth paragraph) and provide only one all-inclusive criterion in final 114.00D3a(ii). In final 114.00D3a(iii) we added the immunoglobulin A (IgA) serological assay specific for HIV as another test that documents HIV infection in children. Although this test is not widely available, it is highly accurate for diagnosis of HIV infection.

Final 114.00D3b describes when documentation of HIV infection is possible without definitive laboratory evidence. We have expanded the explanation of why infants may have serum antibodies for HIV but not have HIV infection, formerly in the fifth paragraph of proposed 114.00C, and have extended the age limit from 15 months to 24 months in response to comments and information we received. We also include criteria for situations in which the presence of HIV infection may be presumed in such infants when there are HIV antibodies and other signs of the infection, such as a significantly depressed CD4 count, even though these findings would not definitively diagnose the presence of the disease. In response to comments, we added to these criteria abnormal immunoglobulin G (IgG) and abnormal CD4/CD8 ratio. As in the adult rules, we provide that the presence of HIV infection in children may also be established by medical history, clinical and laboratory findings, and diagnoses consistent with the prevailing state of medical knowledge and clinical practice, as, for example, when the child has an opportunistic disease predictive of a defect in cell-mediated immunity and there is no other known cause of diminished resistance to that disease.

Final 114.00D4 explains the documentation requirements for opportunistic diseases and other manifestations of HIV infection in children. Final 114.00D4a describes the methods of documenting manifestations of HIV infection by definitive diagnosis. It is identical to final 14.00D4a of the adult rules except that we have added a reference to children.

Final 114.00D4b discusses other acceptable documentation of opportunistic diseases and HIV manifestations. It is identical to final 14.00D4b of the adult rules except that we have added a reference to children.

Final 114.00D5 replaces the discussions in the ninth, tenth, and eleventh paragraphs of proposed 114.00C. For reasons we explain in the public comments section of this preamble, we deleted the proposed text on the epidemiology of HIV infection in children, the text discussing the mean age of diagnosis in infants, and the provisions on the course and spectrum of the disease in children age 13 or older. We also deleted the sentence from the ninth paragraph of proposed 114.00C that cross-referred to the adult listing for HIV wasting syndrome; instead, we have provided explicit listing criteria for the evaluation of weight loss in children in final Listing 114.08I.

In final 114.00D5, we continue to acknowledge that HIV infection can manifest itself differently in children than in adults, and have expanded the provisions describing these differences in response to comments. We moved the proposed guidance on HIV encephalopathy and neurologic problems into a separate paragraph because neurological impairments may be more subtle and difficult to detect in children than in adults. We also added two new paragraphs discussing the evaluation of bacterial infections; as part of this guidance, we point out that older female children may have pelvic inflammatory disease, just as women do.

Final 114.00D6, Evaluation of HIV infection in children, replaces the second, twelfth, and sixteenth paragraphs of 114.00C of the NPRM. The first and second paragraphs of the section are identical to the first and second paragraphs of final 14.00D6, except that we have used the word "child" as appropriate. The third paragraph contains the same information as the third paragraph in final 14.00D6, except that it refers to the sequential evaluation process for children in § 416.924 of part 416. As in the adult rules, final 114.00D6 includes a discussion of the need to evaluate the impact of all impairments in children with HIV infection and explains that some children with HIV infection may have severe impairments that are less than listing-level severity, but that may still be disabling. Evaluation of these cases should proceed through the final step of the sequential evaluation process, where an individualized functional assessment is performed.

Final 114.00D7, Effect of treatment, is an expanded version of the thirteenth paragraph of proposed 114.00C. As in final 14.00D7 of the adult rules, it discusses the need to evaluate the impact of treatment in children with HIV infection and refers to both the potential benefits and the potential adverse effects of treatment on a case-by-case basis. The first and third paragraphs of final 114.00D7 are identical to the corresponding paragraphs in final 14.00D7 except that we have used the word "child" as appropriate. The second paragraph is nearly identical to the second paragraph of final 14.00D7 except that we use an example of a childhood infection, otitis media, and the word "child" as appropriate.

Final 114.00D8, Functional criteria, discusses the functional criteria contained in final Listing 114.08O. We modified the proposed language in order to conform with the changes we made in the functional criteria (see "Explanation of the Final Rule," above).

114.08 Human Immunodeficiency Virus (HIV) Infection

This new listing adds to the regulations our criteria for evaluating HIV infection in children at the listing level. The listing includes a range of opportunistic diseases, cancers, and other manifestations that are indicative of listing-level severity in children with HIV infection. A separate listing is necessary for children because children with HIV infection may differ from adults in the mode of infection, clinical manifestation, and course of the disease

Specific manifestations that are considered indicative of listing-level HIV infection are in final Listings 114.08A–N, grouped by type (e.g., fungal infections, bacterial infections, malignant neoplasms) for ease of reference. Final Listing 114.08O includes any manifestation(s) of HIV infection that causes listing-level functional limitations.

We reorganized the basic structure and presentation of final Listing 114.08 in the same way as the adult rules. Therefore, the final listing is significantly different from the proposed listing. Important differences between the final listing and the NPRM and between the childhood and adult listings follow.

For completeness, we added to the final childhood listing a number of criteria that we had proposed only in the adult listing. Adding these criteria did not change the evaluation of HIV infection in children because our regulations in §§ 404.1525 and 416.925 call for using the adult criteria for children whenever the childhood criteria do not apply. We added these new criteria only to make the childhood listing easier to use.

Final Listing 114.08A addresses bacterial infections. The listing includes the same criteria as in final Listing 14.08A. In addition, we have retained, in final Listing 114.08A5, the criteria we proposed in Listing 114.08F1 for children less than 13 years old who experience certain pyogenic bacterial infections at least twice in 2 years. Although we have deleted from the remainder of the childhood listings all of the previously proposed distinctions between children under age 13 and children age 13 and above, we retained this distinction only in final Listing 114.08A5, where it is medically valid. However, consistent with the adult listings, we also added criteria at final Listing 114.08A6 that apply to multiple or recurrent bacterial infections caused by any bacteria—including pelvic inflammatory disease—and that can be applied to all children.

We revised final Listings 114.08B, Fungal infections, 114.08C, Protozoan or helminthic infections, 114.08D, Viral infections, 114.08E, Malignant neoplasms, 114.08F, Conditions of the skin and mucous membranes, and 114.08G, Hematologic abnormalities, in the same way as the adult rules. The language of these provisions is the same except that we provide cross-references to the appropriate childhood listings where necessary. As in the adult listings, the revisions to these childhood rules also provide stand-alone medical criteria for several of the manifestations we had proposed to tie to a test of functional limitations in proposed Listings 114.08L and 114.08M. We added criteria for carcinoma of the cervix and squamous cell carcinoma of the anus (as in the adult listing) to final Listing 114.08E because these conditions may occur in adolescents.

We have extensively revised final Listing 114.08H (proposed Listing 114.08J), Neurological manifestations, based on public comment. A child with HIV infection may now have a neurological manifestation (for example, HIV encephalopathy or peripheral neuropathy) that meets the listing in any of four ways. In response to a comment pointing out that the criteria in proposed Listing 114.08J3 essentially described impairments that meet the criteria in 111.00 of the listings, we revised final Listing 114.08H3 to provide for only progressive motor dysfunction affecting gait and station or fine and gross motor skills. We also changed the criteria for evaluating motor deficits to eliminate the requirement that they be symmetric. However, inasmuch as some children will have neurologic manifestations that meet the criteria of one of the listings in 111.00, we added to the opening paragraph a criterion that permits a finding of disability by cross-reference to those listings. In final Listing 114.08H1, we also revised the criteria for evaluating loss of previously acquired intellectual ability (which were in proposed Listing 114.08J1) to reflect our intent to include those situations where the child does not lose previous knowledge, but is unable to learn new information; that is, suddenly acquires a new learning disability. We also added a cross-reference in final Listing 114.08H2 to the new discussion in 114.00D5 describing documentation of impaired brain growth.

Final Listing 114.08I addresses growth disturbances. These criteria were previously in proposed Listing 114.08K. Based on numerous public comments, we added weight criteria for evaluating failure to thrive, which are based on a fall from an established growth curve. These criteria recognize that, unlike adults (who have stopped growing), children can be gaining weight yet still be failing to thrive because their weight gain is not commensurate with their growth. Final Listing 114.08I1 describes children who, because of weight loss or failure to gain weight at an appropriate rate for age, have a persistent fall (defined as 2 months or longer) of 15 percentiles from an established growth curve on standard growth charts, irrespective of the actual percentile at which their weight lies. Conversely, final Listing 114.08I2 describes children whose weight, because of an involuntary weight loss or failure to gain weight at an appropriate rate, falls and persists below the third percentile from an established growth curve on standard growth charts, irrespective of the number of percentiles of the fall. A new third criterion, final Listing 114.08I3, provides for an involuntary weight loss greater than 10 percent of baseline that persists for at least 2 months. In final Listing 114.08I4, which incorporates the proposed listing's cross-reference to the growth impairment listings, we changed the cross-reference to the entire section, 100.00, for consistency with the changes we made to other listings.

Final Listing 114.08J, Diarrhea, is the same as the corresponding final adult listing, 14.08J. This condition was previously in proposed Listings 114.08L and 114.08M only in conjunction with the functional requirements. Final Listing 114.08K, Cardiomyopathy, is also the same as final Listing 14.08K, except for the cross-reference to the listings in 104.00; the cross-reference to adult neurological Listing 11.04, however, is correct and consistent with our cardiovascular rules for children. This condition was proposed only in the adult listings. We decided to add it to the childhood listings because it also occurs in children.

Final Listing 114.08L addresses lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia (LIP/PLH complex). This criterion was previously in proposed Listing 114.08G. We changed the criteria to apply to all children rather than just applying it to children under age 13, as we proposed. We also added criteria for listing-level severity, because these conditions may range widely in their severity and impact on a child's functioning.

Final Listing 114.08M, Nephropathy, is the same as final Listing 14.08L except that the cross-references are to the criteria in 106.00 of the childhood listings. As with cardiomyopathy, we had proposed to include this condition only in the adult listings, but have added it to the childhood listings because it also occurs in children.

Final Listing 114.08N is identical in substance to final Listing 14.08M. It includes a number of infections that we had proposed to include only with functional limitations: sepsis, meningitis, pneumonia, septic arthritis, endocarditis, and radiographically documented sinusitis.

Final Listing 114.08O addresses any other manifestation(s) of HIV infection that either does not meet the criteria in any of the other childhood HIV listings

or is not contained in those listings. We have already described the criteria of the final listing above.

Other Changes

It was apparent to us from some of the comments that it would be helpful and clearer if we used the same or similar language in parts A and B of the listings where we intended the provisions to be analogous. Therefore, we made a number of revisions in parts A and B to make their language consistent. In the majority of cases, these changes were editorial, not substantive. We also made minor editorial changes throughout the rules to correct errors in the NPRM, maintain internal consistency, and conform the style of these listings to our other listings.

As already explained, these final listings move the listings for systemic lupus erythematosus and systemic sclerosis and scleroderma from Listing 10.04 and 10.05 to Listings 14.02 and 14.04. Because of this, we are changing the references in the second sentence of 8.00B of the skin impairment listings to reflect the new designations.

We made several other changes in response to the public comments in addition to those described above. We describe these changes, and explain why we made them, in the following summary of the public comments.

Public Comments

We carefully considered all of the comments and adopted many of the recommendations. The resulting changes are identified in the following discussion of issues that were raised in the comments.

Many of the comments were quite long and detailed. Of necessity, therefore, we had to condense, summarize, or paraphrase them. However, we tried to express everyone's views adequately and respond to all of the relevant issues raised. There were a few comments that we did not address below. This is because they only pointed out minor typographical errors, or were about information in the preamble to the prior rules or administrative matters that are not appropriate to the final rules.

For ease of reference, we organized the comments and responses as follows. We first address general comments, i.e., comments that are either about the rules as a whole or that apply to more than one section of the rules. We then address the remaining comments, which pertain to specific sections of the rules. If we changed the section numbers or headings in the final rules, we provide both the NPRM and final references in the text of the comment and response.

9.00 Endocrine System and Obesity

Hansen's Disease

Comment: A few commenters thought that there are still sufficient cases of Hansen's disease to warrant its retention in the listings.

Response: We did not adopt the comment. The incidence (new cases per year) of Hansen's disease (leprosy) in the United States is very low, less than 135 in the past few years. Moreover, we do not need a separate listing because the dermatological and neurological manifestations of this disorder are addressed in the sections pertaining to those body systems.

9.00 and 9.09 Obesity

Comment: One comment we received said that we should not move the obesity listing to the endocrine system section, but that it should stay with the impairments in the multiple body system section.

Response: We did not adopt the comment. With the exception of obesity and Hansen's disease (which we have deleted), we have moved all the impairments from the adult multiple body systems section to the newly established "Immune System." Rather than keep obesity as the sole impairment in a body system, we believe that the most appropriate location for it would be the endocrine system, which is now titled: "Endocrine System and Obesity."

Comment: A comment asked whether the reference to the "spine" in proposed Listing 9.09A was meant to include the cervical and thoracic regions of the spine. Another comment said that the listing for obesity should state that the history of pain, limitation of motion, and arthritis caused by obesity in any weight-bearing joint or spine need only be minimal to satisfy the listing's requirements.

Response: We agreed with the first comment that the references to the "spine" in former Listing 10.10A and proposed Listing 9.09A could be made clearer. The listing has always applied only to the weight-bearing parts of the spine (i.e., the lumbosacral regions). Therefore we have clarified the language in final Listing 9.09. This is not a substantive change from the prior rules or the NPRM, but a clarification of our intent that the phrase "weight-bearing" modify both "joint" and "spine" in the listing.

We did not adopt the second comment because it is implicit in the language of the rule. The fact that the degrees of pain, limitation of motion, and arthritis in the weight-bearing structures are not quantified indicates the intentional absence of threshold criteria.

Comment: A comment stated that the adult obesity listing is inadequate for assessing obesity in children. The comment also suggested that we consult with pediatricians to develop a childhood obesity listing by which to assess whether a child is functioning independently, appropriately, and effectively in an age-appropriate manner.

Response: We did not adopt the comment because the creation of a childhood obesity listing is beyond the scope of these rules. When we consider revising the childhood endocrine section, we will consider whether we need to add a listing for obesity.

14.00 and 114.00 Immune System—Non-HIV Listings

Connective Tissue Disorders—General Comments

Comment: One comment stated that the term "rheumatic diseases" better describes conditions such as juvenile arthritis, systemic lupus erythematosus, dermatomyositis, and scleroderma than does the term "connective tissue disorders."

Response: We did not adopt the comment. Inflammatory arthritides (which are types of connective tissue disorders), including rheumatoid arthritis, psoriatic arthritis, Reiter's syndrome, and ankylosing spondylitis, are included in the musculoskeletal body system listings in 1.00 and 101.00. Therefore, we prefer the term "connective tissue disorders" because it better describes the disorders in 14.00 and 114.00.

Comment: Another comment said that systemic lupus erythematosus, systemic sclerosis, and polymyositis are rheumatic disorders that should be retained under the multiple body system section, or grouped into a new section titled, "Rheumatic Disorders." The comment added that any listing of the immune system should include multiple sclerosis and myasthenia gravis.

Response: We did not adopt the comment. We agree that all immune system disorders are not included in this listing. There are many disorders of immune regulation that are covered in other body systems, depending on the primary target organs. For example, multiple sclerosis (Listing 11.09) and myasthenia gravis (Listing 11.12) are evaluated under the neurological body system because neurological dysfunction is the primary outcome of these impairments. However, in the immune system listings we have

grouped a number of connective tissue disorders that are characterized by autoimmune abnormality.

Comment: A few commenters called for rheumatoid arthritis to be grouped with systemic lupus erythematosus (Listings 14.02 and 114.02), systemic vasculitis (Listings 14.03 and 114.03), systemic sclerosis (Listings 14.04 and 114.04), and polymyositis (Listings 14.05 and 114.05). One of their comments said that the inclusion of rheumatoid arthritis would be consistent with our emphasis on functional aspects rather than labeling or diagnosis, inasmuch as the effects of all of these disorders on joints and internal organs are very similar.

Response: We did not adopt the comment in these final rules. However, we will consider the comment when we consider any revisions to the musculoskeletal body system listings.

Comment: A few commenters called for separate listing subsections for Sjögren's syndrome, sarcoidosis, psoriatic arthritis, Ehlers-Danlos syndrome, Marfan's syndrome, and, in the adult section, congenital immune deficiencies, such as genetic dwarfism. They also stated that consideration of Raynaud's phenomena should not be limited to systemic sclerosis and scleroderma. One of their comments suggested the addition of listings subsections for spondyloarthropathies, reactive arthritides, Bechet's syndrome, familial Mediterranean fever, and inflammatory myopathies other than polymyositis, such as body myositis. The comment also stated that the listings should consider the effects of therapy, which can cause bone thinning, pathologic fractures, and growth failure.

Response: We did not adopt the comments, but we did add guidance to 114.00B of the childhood rules in response to the last comment. The listings are only examples of impairments, not an all-inclusive list, and serve as a screening device by which we can quickly identify individuals who are disabled as a result of commonly occurring impairments. Even though they include many impairments, they have never been intended to include all impairments. It would not be feasible to attempt to provide a listing for every known disease. Generally, when a specific disease is not listed, we use the listing that provides the findings most closely analogous to the findings associated with the unlisted impairment.

Sjögren's syndrome is evaluated under the applicable body system depending on the presenting manifestation (e.g., kerato-conjunctivitis under 2.00 or 102.00, xerostomia under 5.00 or 105.00, arthritis under 1.02 or 101.02, and other connective tissue involvement under 14.00 or 114.00). The most common rheumatic manifestation of sarcoidosis is acute arthritis, which may be evaluated under the musculoskeletal system (Listings 1.02 and 101.02). When chronic arthritis occurs, the predominant impairment is due to involvement of the lungs, spleen, bone marrow, and bone. Hence, sarcoidosis, the cause of which is unknown, should also be evaluated under the applicable body system, depending on the disease manifestations. Psoriatic arthritis and spondylitis may be evaluated under 1.00, 101.00, or 8.00. Raynaud's phenomena are seen in several connective tissue disorders, but are particularly common in systemic sclerosis (Listings 14.04 and 114.04) and undifferentiated connective tissue disorders (Listings 14.06 and 114.06). When they occur in these or other connective tissue disorders and are characterized by digital ulceration, ischemia, or gangrene, equivalence to Listing 14.04 or 114.04 could be found.

Although Ehlers-Danlos syndrome and Marfan's syndrome are connective tissue disorders, they are not immune disorders, but genetic disorders, and, therefore, should not be included in the immune system listings. These syndromes are evaluated under the listings for the affected body system, (e.g., cardiovascular, visual, musculoskeletal, gastrointestinal).

Listings 14.07 and 114.07 provide criteria for immunoglobulin deficiency states and non-HIV cell-mediated immune deficiency. Myositis and myopathy may occur in a wide spectrum of diseases, and should be evaluated under the body system applicable to the primary disorder associated with the myopathy (e.g., 6.00 or 106.00 for hyperthyroidism, 11.00 or 111.00 for myasthenia gravis, or 14.00 or 114.00 for connective tissue disorders). Equivalence to 14.05 or 114.05, polymyositis, may be found when the criteria are applicable but the cause of the myopathy is other than polymyositis. Muscle weakness associated with myopathies may also manifest equivalent severity under the neurological listings. Spondyloarthropathies and "reactive" arthritides may be evaluated under 1.00 or 101.00. Bechet's syndrome is rare, its manifestations diverse, and etiology unknown. The major findings are genital and oral ulcers, skin lesions, and ocular lesions. Evaluation should be under the applicable body system for the manifestation(s). Mediterranean fever is an inherited disorder and not due to immune dysregulation. It is characterized by acute, self-limited attacks of fever, abdominal pain, pleuritic pain and, occasionally, arthritis. Evaluation for equivalence under rules applicable to other episodic illnesses is appropriate.

We do consider the effects of treatment in all cases. The fifth paragraph of 14.00B (both in the NPRM and the final rule) indicates that in addition to the limitations caused by the connective tissue disorder itself, the chronic adverse effects of treatment may result in functional loss. However, even though this principle is fundamental to all disability adjudications, the last comment made us realize that we had stated it explicitly in the preface to the adult rules but not in the preface to the childhood rules. Therefore, in response to the comment, we have added a new fourth paragraph to final 114.00B which is identical to the corresponding paragraph in the adult rules and underscores the need to consider the adverse effects of treatment (such as corticosteroid therapy) when evaluating connective tissue disorders in children.

Comment: We received a comment stating that because of the vast number of rare "orphan diseases," the primary factor that we should use to determine disability should be functional limitations caused by symptoms of any etiology.

Response: As noted previously, the listings are only examples of commonly occurring impairments and are not intended to include all impairments, especially rare ones. Many listings, including final Listings 14.02–14.06 and 114.02–114.06 do include functioning among their criteria; when we use these listings for comparison to evaluate unlisted impairments, we also consider functioning within the context of the listings. Moreover, for children who apply for SSI benefits based on disability, we also provide a "functional equivalence" determination.

Even if the individual's severe impairment(s) does not meet or equal in severity any listing, we still always assess the functional limitations caused by the impairment(s) and use that assessment to determine whether the individual is disabled at the later steps of the sequential evaluation processes for adults and children. As with all claims where the individual has a severe impairment(s) that does not meet or equal the severity of a listed impairment, the individual's claim is evaluated further and residual functional capacity is assessed to determine if he or she has the ability to do past relevant work. If the individual cannot perform his or her past work, we

will determine if there are other jobs the individual can perform. In the case of a child under 18 who is applying for SSI, we perform an individualized functional assessment to determine if he or she is able to function independently, appropriately, and effectively in an age-appropriate manner.

Comment: One comment said that, beyond the information needed to make a medical diagnosis, there should be more specific guidelines in the listings on assessing function because of the imperfect relationship between a person's capacity and his or her function.

Response: We did not adopt the comment. We already have very detailed standards on assessing function for all impairments. The instructions address the need to consider the specific effects of each person's impairment(s) on his or her ability to function and recognize that one individual's limitations may differ from another's even though they may have the same impairment(s).

Comment: Another comment suggested adding listing criteria for chronic fatigue syndrome which, the comment said, is an immunological disorder that affects millions of individuals.

Response: We did not adopt the comment. Due to the divergence of medical opinion on chronic fatigue syndrome, we do not believe that it is either possible or appropriate to establish listing criteria. Further, such a listing would be beyond the scope of these rules.

Comment: One comment questioned whether adults who have impairments that would meet the childhood criteria may be found disabled using the part B criteria. The comment also asked if children who have impairments that meet the childhood criteria will remain eligible upon attainment of age 18, or whether they will then have to demonstrate that they have impairments that meet the part A criteria.

Response: As set forth in §§ 404.1525(b)(2) and 416.925(b)(2) of our regulations, the criteria in part B apply only to the evaluation of impairments in persons under age 18. Therefore, the listings in part B may not be used to find an adult disabled.

We do not require children to reestablish disability based on adult criteria when they attain age 18. However, we do periodically review the claims of disabled people to determine whether they are still disabled. When we determine whether disability continues, we apply a medical improvement review standard required by the statute. Under this standard, if a beneficiary who is now an adult was most recently found disabled (or still disabled) because his or her impairment(s) met the childhood criteria, we use those childhood criteria, even after the individual has attained age 18, as a basis of comparison to determine whether there has been any medical improvement in the individual's impairment(s) that is related to the ability to work.

14.00A and B, and 114.00A and B Preface

Comment: One comment said that the discussion on polymyositis and dermatomyositis in 14.00B4 omitted any other inflammatory myopathies and implies that if there is weakness, pain or tenderness in any muscles other than the proximal limb-girdle, cervical, cricopharyngeal, or intercostal muscles or the diaphragm, then one does not meet this criterion.

Response: We accommodated the comment by indicating in final 14.00B4 that the descriptions are only meant to describe the criteria in Listing 14.05. The muscles described in Listing 14.05 and in final 14.00B4 are the ones usually involved in polymyositis or dermatomyositis. If other muscles are involved, the underlying disorder—which may not be polymyositis—should be identified if possible and considered under the appropriate body system listings. If the impairment is found to be severe at the second step of the sequential evaluation processes but does not meet or equal in severity any listing at the third step of the processes, we will do an individualized assessment of its impact on the person's functioning and decide disability at the last steps of the sequential evaluation processes.

Comment: Another comment stated that weight loss as a constitutional symptom, which is recognized in 14.00B of the adult listings, should also be recognized in the childhood listings.

Response: We did not adopt the comment because the proposed childhood listings already included weight loss in the fourth paragraph of proposed 114.00B. That same language appears in the last sentence of final 114.00B.

14.02–14.06 and 114.02–114.06 Connective Tissue Disorder Listings

Comment: One comment noted that the phrase "with the expectation that the disease will remain active for 12 months" appeared repeatedly in the proposed connective tissue disorder listings (in proposed Listings 14.02–14.06 and 114.02) and asked how we make such a prediction. The comment said that unless we describe how physicians are to make the prediction, claimants who have had active disease for 10 or 11 months will be denied benefits.

Response: Even though we disagree with the conclusion that we would deny claims filed by individuals who have had active, listing-level disease for almost a year, we partially adopted the comment. We frequently make findings of disability based on an expectation that a disabling impairment(s) is expected to last for at least 12 months. In most cases in which the evidence substantiates a finding of disability, it is readily apparent from the same evidence whether or not the impairment is expected to last 12 months from the onset of disability. When the application is being adjudicated before the impairment has lasted 12 months, the nature of the impairment, the therapeutic history, and the prescribed treatment serve as the basis for concluding whether the impairment is expected to continue to prevent the individual from working for the required 12 months' duration. However, we are not describing this in the listings because it is longstanding practice that applies to all types of impairments, not just connective tissue disorders.

This comment and others made us realize that the discussions on duration in proposed Listings 14.02–14.06 and 114.02 made the proposed listings unnecessarily complex. More importantly, they only repeated the general listings requirements in §§ 404.1525(a) and 416.925(a). There is, therefore, no reason to repeat the provision in each of these listings. Therefore, in response to this and other comments, we removed the repetitive language from each of the proposed listings and added a single discussion on duration in 14.00B and 114.00B as a reminder of the basic rules. For consistency, we also removed the statements in each of the listings requiring a 3-month longitudinal clinical record, inasmuch as we already make the statement in 14.00B and 114.00B. We also moved the requirement that the disorder remain active, "despite prescribed therapy" into the same sections of the preface. (We also changed the word "therapy" to "treatment" for reasons explained elsewhere in this preamble.) The result is that final Listings 14.02–14.06 and 114.02 are much simpler to read, even though there is no substantive change in the rules as a result of these editorial changes.

Finally, we will not generally find an individual who has had active, listing-level disease for 10 or 11 months to be not disabled. Unless the impairment has

significantly improved to the point at which it is no longer disabling at the second, fourth, or fifth steps of the sequential evaluation process for adults (or the second or fourth steps of the sequential evaluation process for children claiming SSI benefits) before the end of 12 months after onset, an allowance would be appropriate. We are confident that our adjudicators understand this principle.

Comment: A comment suggested editorial changes to the statements regarding duration in Listings 14.02 and 14.03, apparently to remove redundancies.

Response: We adopted the comment in part by moving references pertaining to durational requirements from all of the listings that used this language to one location in 14.00B and 114.00B.

Comment: One comment we received said that there were problems with including in Listing 114.02A cross-references to other listings criteria as a means of describing the multiple organ dysfunction of systemic lupus erythematosus. The comment said that the type and pattern of organ involvement in systemic lupus erythematosus is not always the same as in other disorders and that muscle involvement in scleroderma and systemic sclerosis is not necessarily similar or identical to the muscle involvement of polymyositis or dermatomyositis. The comment also questioned the propriety of referencing some of the childhood connective tissue disorders to adult criteria because the disorders are not always identical in children and adults.

Response: We did not adopt the comment. Connective tissue disorders may involve many different organs and body systems. Establishing specific criteria for every organ in each body system would make the listing unnecessarily complicated. Consequently, we believe that cross-references to existing listings are the best solution.

We cross-referenced the childhood systemic lupus erythematosus listing (final Listing 114.02) to other body systems, the scleroderma and systemic sclerosis childhood listing (final Listing 114.04) and polymyositis and dermatomyositis childhood listing (final Listing 114.05) to the corresponding adult rules in final Listings 14.04 and 14.05, and the childhood undifferentiated connective tissue disorders listing (final Listing 114.06) to the childhood listings for systemic lupus erythematosus and systemic sclerosis and scleroderma (final Listings 114.02 and 114.04), because their manifestations can be identical, even though the causes of the problems are not the same. Cross-referencing provides a means to find the existence of a disabling impairment when a single manifestation of disease is at the same level of severity described in the cross-referenced listing.

Comment: A comment asked whether severe fatigue, fever, malaise, and weight loss must all be present to satisfy the criteria in Listings 14.02B, 14.03B, and 14.04B (and, presumably, 114.02B).

Response: We adopted the comment. The parenthetical "e.g." in the proposed rules was an error. We have corrected final Listings 14.02B, 14.03B, 14.04B and 114.02B to show that all four symptoms and signs must be present. However, instead of replacing the proposed "e.g." with "i.e.," as we originally intended, we have revised the sentence to make our intent clearer. The final provisions state that the disorders must be "* * * associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss." We chose the particular symptoms and signs shown in the listings because they are the most common and are most likely to be present.

Comment: Another comment asked that we define the terms "severe" and "moderate" used throughout the listings for connective tissue disorders.

Response: We did not adopt the comment. Even though, as we explain later, we changed the term "severe" in places where it could have been confused with other terms ("incapacitating" and "major"), we retained the terms "severe" and "moderate" where we believe they are appropriate and unambiguous. The terms are widely used to describe relative values on a rating scale, and their meanings are commonly understood. But because their meanings are somewhat nonspecific, use of these terms in Listings 14.02, 14.03, 14.04, and 114.02 unquestionably requires a degree of judgment, as do many other aspects of our disability evaluation process. Our adjudicators are accustomed to making these judgments on a case-by-case basis, and we believe that attempting to devise specific definitions for terms that are, by their nature, non-specific, would only make the listings confusing. However, in response to this comment, we have also provided clarification in 14.00B and 114.00B that we use the word "severe" in these listings in its medical sense, not in the functional sense associated with the second step of our sequential evaluation processes. We explain this provision in a later response, below.

14.02 and 114.02 Systemic Lupus Erythematosus

Comment: One comment noted our statement in proposed 14.00B1 that, "[g]enerally" the medical evidence will show that patients with systemic lupus erythematosus will fulfill the 1982 "Revised Criteria for the Classification of Systemic Lupus Erythematosus" of the American College of Rheumatology (formerly, the American Rheumatism Association). The comment also noted that this implies that an individual can have systemic lupus erythematosus and not fulfill these criteria, and asked why similar latitude is not provided for other conditions.

Response: We did not adopt the comment. We used the word "generally" because the diagnosis is not invariably made strictly according to the criteria. To meet the American College of Rheumatology diagnostic criteria for systemic lupus erythematosus an individual must have four manifestations out of a list of 11 criteria, and the vast majority of people with this disorder will meet these criteria. However, a doctor will occasionally make a diagnosis of systemic lupus erythematosus when an individual has only three out of 11 manifestations, or other findings, when it appears likely that the diagnosis is appropriate.

Latitude is built into all the connective tissue disorder criteria. The guidance in final 14.00B3 for evaluations under Listing 14.04, Systemic sclerosis and scleroderma does not require that any specific pattern of disease manifestations be present to establish the diagnosis. The criteria in Listing 14.04 are similar to those for the other connective tissue disorders, providing references to other listings. As in those other listings, it also provides alternative criteria for multisystem manifestations associated with constitutional symptoms and signs. This is also true of polymyositis, 14.00B4 and final Listing 14.05, and undifferentiated connective tissue disorder, 14.00B5 and final Listing 14.06.

Systemic vasculitis, 14.00B2 and final Listing 14.03, comprises several diverse clinical syndromes and is characterized diagnostically by a tissue biopsy showing necrotizing vascular inflammation. Hence, a tissue biopsy or an angiogram showing the characteristic vascular abnormalities is necessary to confirm the clinically suspected diagnosis. However, when the findings of a referenced listing are present or multisystem involvement is evident with constitutional symptoms and signs, listing-level severity may be found even if there has not been a definitive

diagnosis. Hence, this listing also provides latitude.

Comment: A few commenters said that they were not sure that the medical community at large is familiar with the 1982 "Revised Criteria for the Classification of Systemic Lupus Erythematosus" of the American College of Rheumatology. They suggested that, instead of referencing it, the material should be included in the listing itself or in a readily available supplement. One of their comments asked why we proposed to use the American College of Rheumatology criteria for systemic lupus erythematosus, but not for the other connective tissue disorders. The comment also said that most of the rheumatic diseases are syndromes and the diagnoses are made by meeting specific criteria.

Response: We did not adopt the first comment because we do not think that it is necessary to publish the diagnostic criteria in the regulations. The American College of Rheumatology diagnostic criteria are widely available and widely known.

Systemic lupus erythematosus is a relatively common disease, the diagnosis of which is based upon the presence of several non-specific clinical and laboratory abnormalities. Because of the lack of a single set of diagnostic findings, individuals may be erroneously diagnosed because of a non-specific laboratory result. It is, therefore, appropriate to refer to the published American College of Rheumatology diagnostic criteria. The vasculitides, on the other hand, are rare and difficult to diagnose clinically. The hallmark for and the diagnosis of vasculitis is almost invariably based upon characteristic clinical findings and tissue biopsy showing necrotizing vascular inflammation. Moreover, there are no published specific diagnostic criteria based upon clinical observations and laboratory tests. Therefore, referral to published diagnostic criteria is not possible.

Comment: A few commenters said that, because the type and pattern of joint involvement in rheumatoid arthritis and juvenile rheumatoid arthritis differs from that seen in systemic lupus erythematosus, the rheumatoid arthritis and juvenile rheumatoid arthritis criteria in Listings 1.02 and 101.02 should not be applied as reference listings to the evaluation of systemic lupus erythematosus under Listings 14.02A1 and 114.02A2. One of their comments noted further that, if there is joint involvement consistent with rheumatoid arthritis or juvenile rheumatoid arthritis in the presence of other findings consistent with systemic lupus erythematosus, then, by our definition, this would be an undifferentiated connective tissue disorder, which should be evaluated under Listings 14.06 and 114.06.

Response: We did not adopt the comment. In referencing proposed Listing 14.02A1 to Listing 1.02, and proposed Listing 114.02A2 to Listing 101.02, we were providing a means to determine the presence of a disabling impairment when a single manifestation of disease is at the same level of severity as that described in the reference listing. We did not mean to imply that systemic lupus erythematosus and rheumatoid arthritis have identical characteristics. To make this point even clearer, we have revised the cross-references in the final rules to the generic body system headings, 1.00 and 101.00, in order to include any musculoskeletal effects of systemic lupus erythematosus that are at the listing level of severity.

A diagnosis of undifferentiated connective tissue disorder is appropriate where the impairment has features suggestive of a connective tissue disorder but not diagnostic of any one disorder. We did not intend to suggest otherwise in Listings 14.02A1 and 114.02A2, which describe properly diagnosed systemic lupus erythematosus.

Comment: One comment noted that the adult listing for systemic lupus erythematosus included a criterion for muscle involvement (Listing 14.02A2), but proposed childhood Listing 114.02 did not.

Response: In response to the comment, we added muscle involvement to final Listing 114.02A3. Because of this addition, we renumbered the subsequent criteria accordingly.

Comment: Another comment suggested that Listing 114.02 include cross-references to criteria in the hemic system and to the listings for depression and Raynaud's phenomena.

Response: We adopted the comment. Although proposed childhood Listings 114.02A8 and 114.02A12 did include cross-references to specific hemic listings (Listings 7.02 and 107.06) and mental disorders listings (Listings 112.02, 112.03, and 112.04), we revised final Listings 114.02A9 and 114.02A13 so that they refer to the hemic and lymphatic and mental "body systems" in general (107.00 and 112.00), instead of to specific listings. In this way, no hemic or mental manifestations will be overlooked and the listing will remain up-to-date should we revise the hemic and mental listings in the future. Even though Raynaud's phenomena are not a primary feature of childhood systemic lupus erythematosus, we added a cross-reference to Listing 14.04D in final Listing 114.02A6 for those situations in which children do have such manifestations at the listing level. For consistency, we also added a cross-reference to Listing 14.04D in the corresponding adult rule, final Listing 14.02A5.

Comment: One comment suggested that in proposed Listing 14.02B the requirement that the individual demonstrate "severe" and "incapacitating" signs and symptoms was extreme, especially when a full 12 months of this level of severity must be anticipated.

Response: We adopted the comment in part. We agree that "incapacitating" is a higher level of severity than is needed to show listing-level severity. Furthermore, the comment made us realize that we had proposed slightly different language (using the terms "severe," "incapacitating," and "major") for corresponding paragraphs in proposed Listings 14.02B, 14.03B, 14.04B, and 114.02B, when we intended to say the same thing in each section. Furthermore, the word "major," which we had proposed in Listing 14.04B, could have caused confusion because it has a particular meaning in the medical community, referring to kinds of infections. Therefore, we replaced all these terms with the word "significant," which conveys the intended meaning consistently throughout these final listings.

We also realized that referring to "severe" symptoms and signs in these listings could have caused confusion because "severe" has a specific meaning when we use the word in the phrase "severe impairment" to describe the functional impact of an impairment(s) (see §§ 404.1520, 404.1521, 416.920, 416.921, and 416.924). For this reason, we have added a sentence at the end of the sixth paragraph of final 14.00B and 114.00B to explain that we use the term "severe" in these listings to describe medical severity and that it does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes for adults and children.

14.03 and 114.03 Systemic Vasculitis

Comment: One comment said that proposed Listing 14.03 on vasculitis was stricter and more detailed than then-current Listing 10.03, which required only signs of generalized arterial involvement.

Response: Listing 14.03 is more detailed than prior Listing 10.03, but the criteria are not stricter. Rather, they are

more medically accurate and reflect state-of-the-art practice. They also now include all forms of systemic vasculitis, and ensure more consistent and valid determinations.

14.04 and 114.04 Systemic Sclerosis and Scleroderma

Comment: A comment suggested that we delete the word "generalized" before "scleroderma" in Listing 14.04C. Another comment questioned why we provided a listing for linear scleroderma for children (Listing 114.04B) but no similar listing for adults, and noted that 14.00B3 omits mention of the differences between limited and diffuse scleroderma.

Response: We have retained the term "generalized" in final Listing 14.04C because adults rarely manifest localized scleroderma; if they do, equivalence to a listing in 1.00 or a residual functional capacity assessment may lead to a finding of disability because of destructive or mutilating lesions of the extremities or the head. We provided criteria for localized scleroderma for children because destructive and mutilating lesions involving the extremities, head, and scalp not only interfere with walking and using the upper extremities, but also with growth and development; scalp and facial lesions in children may also be accompanied by seizures.

"Limited" cutaneous scleroderma is not the same thing as "localized" or "linear" scleroderma, but a systemic form of the disorder. We did not mention the differences between limited and diffuse cutaneous scleroderma in the preface because the differences are not needed for application of the criteria in final Listings 14.04 and 114.04.

Comment: A comment said that, although severe Raynaud's phenomena were included in the proposed Listing 14.04D criteria, they were not defined.

Response: We have clarified the listing in response to the comment. In fact, proposed Listing 14.04D did describe severe Raynaud's phenomena, which are characterized by digital ulcerations, ischemia, or gangrene. However, we realized that the language of the proposed rule, "Raynaud's phenomena *with*" these findings, was not clear. We have, therefore, changed the word "with" to "characterized by" in the final listing to make clear that the findings of digital ulcerations, ischemia, or gangrene define severe Raynaud's phenomena.

14.05 and 114.05 Polymyositis and Dermatomyositis

Comment: One comment stated that proposed Listing 14.05, for polymyositis and dermatomyositis, was too strict. The comment said that an individual who satisfied the criteria in the opening paragraph of the listing (which required 3 months of active disease, severe proximal muscle weakness despite prescribed treatment, and an expected duration of 12 months) should be found to meet the listing without also having to satisfy the criteria in proposed Listing 14.05A or 14.05B.

Response: We partially adopted the comment. The commenters misunderstood our intent in proposed Listing 14.05. The criteria in proposed Listings 14.05A and 14.05B were not additional criteria, but were meant to define the "severe proximal muscle weakness" in the opening paragraph. However, the comment made us realize that the listing could be made clearer. Therefore, we have clarified the requirements in final Listing 14.05 by removing the opening paragraph, which was redundant of the criteria for documentation, duration, and severity, discussed in other parts of the listings, and which is now in final 14.00B.

Comment: Another comment suggested that we provide more detail about the required severity of proximal muscle weakness. The comment said that proposed Listing 14.05 required shoulder or pelvic muscle weakness as described in Listing 11.12, which pertains only to muscle weakness of the extremities. The comment also questioned how swallowing and impairment of respiration are to be evaluated under Listings 14.05B1 and 14.05B2.

Response: In response to the comment, we deleted the cross-reference to Listing 11.12B in final Listing 14.05A and instead provided a discussion of the intent of the provision in final 14.00B4. We also provided a more detailed description of the criteria in final Listing 14.05B1 for cricopharyngeal weakness. However, we think that proposed Listing 14.05B2 was clear and have made no changes in that final listing.

Comment: Another comment questioned why there was no adult listing corresponding to Listing 114.05B for polymyositis or dermatomyositis with severe multiple joint contracture or diffuse cutaneous calcification, and why swallowing or respiratory difficulties are limited to adult Listing 14.05B1.

Response: Both multiple joint contractures and diffuse cutaneous calcification are extremely uncommon findings in adults with these disorders; however, if an adult has these findings their specific impact on the individual must be assessed. Multiple joint contractures in an adult that are of listing-level severity should be evaluated under the criteria in 1.00ff, the musculoskeletal body system. Listing-level cutaneous calcification may be evaluated under Listing 14.04, Systemic sclerosis and scleroderma.

Swallowing and respiratory difficulties are not limited to Listing 14.05B. Childhood Listing 114.05A indicates that impairment should be evaluated according to Listing 14.05. Therefore, all of the criteria in Listing 14.05 apply to children.

14.06 and 114.06 Undifferentiated Connective Tissue Disorder

Comment: One comment questioned whether the term "undifferentiated connective tissue disorder" used in Listings 14.06 and 114.06 is synonymous with "mixed connective tissue disorder." The comment also questioned why chronic undifferentiated tissue disorder is evaluated by reference to the criteria in Listing 14.02, Systemic lupus erythematosus, and stated that the disorder is either systemic lupus erythematosus or it is not.

Response: We partially adopted the comment. We added a discussion of overlap syndromes to final 14.00B5 (which is also referred to in 114.00B) and noted that these syndromes should be evaluated under Listings 14.06 and 114.06. Although most individuals with undifferentiated connective tissue disorders have features of systemic lupus erythematosus, we recognize that some may have features of systemic sclerosis and scleroderma. Therefore, we added to Listings 14.06 and 114.06 cross-references to Listings 14.04 and 114.04. However, we prefer to confine Listings 14.06 and 114.06 to undifferentiated connective tissue disorders to indicate the lack of a specific diagnosis, with its attendant specific prognosis. We also have retained the title.

Comment: Another comment stated that there is a distinction between the undifferentiated connective tissue disorders (i.e., where a connective tissue disorder is present but unknown) and the overlap syndromes (i.e., where there are elements of more than one connective tissue disorder present). This comment also said that both types should be recognized under the listing and that, because some of these disorders are not undifferentiated, Listings 14.06 and 114.06 should be titled: "Other Connective Tissue Disorders."

Response: We did not adopt the comment, except to the extent that we added the aforementioned discussion about overlap syndromes to final

14.00B5. "Undifferentiated connective tissue disorder" is similar to, but not synonymous with, "overlap syndrome" and "mixed connective tissue disorder," but the latter two classifications depend upon constellations of non-specific features. Undifferentiated connective tissue disorders have the clinical and immunologic features of several connective tissue disorders, none of which satisfies the criteria for any of the disorders described. Overlap syndromes have clinical features of more than one established connective tissue disorder, and mixed connective tissue disorders usually have features of systemic lupus erythematosus, systemic sclerosis, and myositis. Most individuals with mixed connective tissue disorders eventually will be shown to have either systemic lupus erythematosus, systemic sclerosis, or Sjögren's syndrome, but a few remain undiagnosed and should be labeled "undifferentiated."

Comment: A comment stated that the criteria for evaluation of childhood undifferentiated connective tissue disorders in Listing 114.06 were a confusing series of cross-references, noting that Listing 114.06 referred to evaluation under corresponding adult Listing 14.06 which, in turn, referred to Listing 14.02.

Response: We adopted the comment. Final Listing 114.06 now indicates that undifferentiated connective tissue disorders should be evaluated by reference to Listings 114.02 or 114.04.

14.07 and 114.07 Immunoglobulin Deficiency Syndromes or Congenital Immune Deficiency Disease

Comment: One comment said that the criteria for the evaluation of immune deficiency disease in Listings 14.07 and 114.07 are too restrictive because they consider only immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, and exclude other immune deficiencies or immune dysregulatory states. The comment also noted our statement in proposed 14.00A that the " * * * disorders include impairments involving deficiency of one or more components of the immune system * * *." The comment said that, although a number of examples are listed in this section, many of the potential immune system impairments are absent from Listings 14.07 and 114.07.

Response: We did not adopt the comment. As we have stated, the listings are only examples of commonly occurring impairments, and are not meant to be all-inclusive. Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity are the most common immune deficiencies. Immune deficiency disorders not specified in Listing 14.07 or 114.07, but that are of listing-level severity, may be found equivalent in severity to the listed criteria.

14.00 and 114.00 Immune System: General Comments on the HIV Listings

Populations Covered by the Rules

Comment: Various commenters asserted that the proposed rules did not include manifestations of HIV infection that affect women, persons of color, gay and lesbian people, and the poor.

Response: On the basis of information we received from individual medical and other experts who study, treat, and work with people who have HIV infection, as well as our review of the medical literature, we do not agree that the proposed rules excluded these groups of people. Based on our experience since December 17, 1991, using our revised operating procedures, we know that the proposed listings would have included the vast majority of people who were disabled by HIV infection. Nevertheless, as we have already explained above in the summary of the final provisions, we have further revised the final listings to make them even more inclusive. Among the new criteria are several new criteria in both the adult and childhood listings that include more of the manifestations of HIV infection unique to women and girls. We are confident that these final rules provide criteria for evaluating all of the manifestations of HIV infection suffered by various populations.

Comment: One of the comments said that the proposed listing did not recognize the medical conditions that affect drug abusers, and that some chronic conditions were not listed.

Response: This comment did not identify any additional conditions that were not listed. The manifestations in proposed Listing 14.08M2 (with the exception of Kaposi's sarcoma), as well as many others throughout the proposed listing, are conditions that affect drug abusers. The conditions in proposed Listing 14.08M2 are now in the final rules as stand-alone medical listings, without functional requirements.

Comment: Many commenters thought that, despite our assertion to the contrary in the NPRM (56 FR at 65703), the proposed rules had not broken the link to the CDC surveillance definition of AIDS. They said the listings were unfair and discriminatory to women, poor people, those who do not have CDC-defined AIDS, and those with no continuity of health care. They indicated that, although we had proposed to include manifestations that the CDC uses to define AIDS without functional criteria, other illnesses (the kind not associated with CDC-defined AIDS, but frequently found in women, intravenous drug users and others who tend to be poor and have limited access to health care) required that functional criteria be met.

Response: We disagree with the comments, but we have revised the rules in response to these and other comments to explicitly include even more manifestations without a functional requirement. Therefore, even though we have included many of the criteria of the CDC's surveillance definition of AIDS, we have also provided many other criteria for people who have symptomatic HIV infection but who do not meet the CDC surveillance definition.

For example, we added as stand-alone conditions as many HIV-related conditions from proposed Listings 14.08M and 114.08L and 114.08M as possible, including endocarditis, syphilis and neurosyphilis, meningitis, pulmonary tuberculosis, and pneumonia. These manifestations are not stand-alone criteria in the CDC surveillance definition of AIDS but, we believe, can be sufficiently severe to be disabling in an individual with HIV infection. In addition, we created a stand-alone listing that includes pelvic inflammatory disease (final Listings 14.08A5 and 114.08A6) and another that includes vulvovaginal candidiasis (final Listings 14.08F and 114.08F).

Standard of Disability

Comment: Many commenters believed the proposed listings did not take into account the progressive nature of HIV infection in adults or children. They suggested that claimants with HIV infection should be found disabled at commensurately lower levels of severity than claimants with other diseases. A few commenters suggested that we adopt the broadest permissible definition of disability so as to get medical care to as many HIV-infected individuals as early as possible. They said this was important because the degenerative nature of HIV-related conditions guarantees that if someone is nearly disabled today, he or she will become disabled in the near future. One of their comments said that, although our stringent disability standards make sense with impairments that are relatively stable and capable of improvement, such eligibility requirements are less necessary when dealing with rapidly degenerative illnesses such as those associated with HIV. This is because there is little need

to consider whether applicants will remain ill long enough to be classified as disabled—those impaired by such illnesses simply do not get better. Another comment noted that, only through a combination of Federal, State and local funding could early treatment and care, including drug trials, be provided, and that tightening the listing criteria would result in the City and State governments bearing the entire responsibility for this continuum of care.

Some commenters cited the rapid deterioration experienced by children with HIV infection, and the fact that few of these children live to adulthood, especially those who acquire the virus from their mothers. The commenters said that our childhood neoplastic listings (i.e., the listings in 113.00) permit a finding of disability before marked functional loss has occurred and thus set a precedent for doing something similar in the case of children with HIV infection.

Response: We believe that these rules provide the broadest permissible definition of listing-level severity, consistent with the definition of disability contained in the Act. Moreover, we do not have the authority to apply a different definition of disability for some people than the standard of disability in the Act. The Act requires that an individual be currently disabled, and does not permit us to find an individual disabled based on a prediction of future disability.

However, these rules are not stricter than our previous criteria. To the contrary, both the proposed rules and these final rules provide more ways in which people with HIV infection may establish that they have listing-level impairments.

Our criteria take into account the unique course and history of HIV disease in both adults and children, including its progressive nature. In cases in which a claimant is experiencing a manifestation(s) of HIV disease that is indicative of a rapid decline in an adult's ability to engage in any gainful activity, or an SSI child claimant's ability to function independently, appropriately, and effectively in an age-appropriate manner, we have defined criteria that do not necessarily require continuous functional loss following the onset of the initial manifestation. Rather, the manifestation of HIV infection can be found disabling even though it includes periods of improvement. However, even though HIV infection is progressive and ultimately fatal, it is not true that all illnesses or other manifestations associated with HIV are rapidly degenerative, or that individuals with HIV infection cannot recover from HIV-related manifestations. Many manifestations are treatable, and many individuals can return to a good level of functioning following a period of severe illness. The impact of HIV and its manifestations is highly individual, and our disability adjudication system, which affords an individualized determination to every claimant, recognizes this.

We believe that this approach is consistent with the approach we take in the neoplastic listings. Neither the HIV listings nor the neoplastic listings describe impairments of lower severity than other listings. Rather, they recognize the medical realities of the conditions in terms of prognosis, overall functioning on a longitudinal basis, and the impact of treatment on functioning.

It is also very important to remember that no individual will be denied benefits simply because his or her impairment(s) does not meet or equal the severity of a listing. If an individual's impairment(s) does not meet or equal the severity of a listing, he or she can be found disabled at later steps of the sequential evaluation processes for adults and children.

Finally, we want to assure the commenters that we share their concerns, and are aware of the poor prognosis for individuals with HIV infection. We believe the promulgation of these listings addresses those concerns.

Comment: Some commenters thought that we should find any individual with symptomatic HIV infection to be disabled.

Response: We do not agree that any individual with symptomatic HIV infection of any type should be found disabled. There are, in fact, many such conditions that are amenable to treatment without significant after-effects, and others that are simply not so severe as to render an individual unable to work or unable to engage in age-appropriate activities. In both instances individuals may continue to function well for long periods, and we believe that it is reasonable to provide regulatory criteria that allow for the individualized assessment of the effects of a person's impairment(s) on him or her, as we have done in final Listings 14.08N and 114.08O.

Comment: A few commenters said that the criteria for HIV infection should recognize that persons who have asymptomatic HIV infection should have the right to treat their condition and prolong their lives through rest and stress reduction, and not be exposed to further compromise of their medical condition in a workplace.

Response: We did not adopt the comment. The standard of disability for adults under the statute is the inability to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment(s), or for children under age 18 who apply for SSI based on disability an impairment(s) of comparable severity to one that would disable an adult. Even though we agree that people who have asymptomatic HIV infection will ultimately become ill, they are not functionally limited until the infection begins to become symptomatic; i.e., until they begin to experience manifestations of the HIV infection. Once individuals do become symptomatic, however, these rules do not require that they be continuously symptomatic. The rules require that their impairments be evaluated on a longitudinal basis in order to form a picture of how the individual is able to function over time. Indeed, we have provided a separate listing, final Listing 14.08N, that includes individuals who suffer periodic manifestations of HIV infection but who may not be continuously limited between the episodes.

We would also like to clarify that we do not require people to work. The Act uses the ability to work as a way of describing the level of severity of impairment that constitutes a "disability." The Act does not say that a person who does not meet the definition of disability must work; it simply says that such a person is not disabled within the meaning of the Act. Indeed, to underscore this point, the statute explicitly excludes from consideration the factors of whether a job exists in the area in which the person lives, whether there are job openings, or whether the person would be hired to do a job. Thus, the listings are not intended for use in determining whether or not an individual should work, but to provide examples of impairments that satisfy the definition of disability in the Act because they are considered severe enough to prevent an adult from engaging in any gainful activity, or an SSI claimant under the age of 18 from functioning independently, appropriately, and effectively in an age-appropriate manner.

Comment: One comment said that any claimant whose physician reports positive HIV infection and a resulting inability to work should be considered disabled, regardless of whether or not the individual presents opportunistic infections.

Response: We did not adopt the comment. As we have said, an individual with asymptomatic HIV infection will not be functionally limited by the impairment. Under our rules for evaluating medical opinion evidence in §§ 404.1527(e) and 416.927(e), the Secretary is responsible for determining whether an individual is "disabled" under the Act; a statement by a medical source that the individual is "unable to work" is not sufficient in itself to establish that an individual is disabled within the meaning of the Act. However, in making our determination, we review all of the medical findings and other evidence in the individual's case record that support a medical source's statement that the individual is disabled and will recontact the source, if necessary, to obtain additional information in support of the opinion.

Comment: A number of commenters suggested that we give special consideration to the "socioeconomic" factors that can affect HIV-infected claimants, such as poor nutrition, limited or no access to ongoing health care, inadequate housing, and adverse family factors.

Response: We did not adopt the comments, but we have revised several provisions in response to these and other comments to make clear that we do consider some of the factors the commenters suggested, though not as "socioeconomic" factors.

The Act requires that disability must be established on the basis of a medically determinable physical or mental impairment(s) that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. It does not permit direct consideration of "socioeconomic" factors as determinants of disability. For example, under the Act we cannot consider whether a claimant lives in inadequate housing or receives substandard medical care in making a disability determination.

However, we do consider some of the factors the commenters believed to be "socioeconomic" factors because they are medical factors under our program. For example, under our program poor nutrition (i.e., malnutrition) is a medical condition and can be a disabling impairment in and of itself if it is of sufficient severity and duration. Even if it is not of listing-level severity, it can limit an individual's ability to function and cause disability, or combine with other impairments to cause disability. Individuals who receive substandard medical care—especially individuals who have HIV infection—will often be more severely impaired than other individuals because of more frequent illness or failure to adequately recover from infections and other manifestations that might be treatable with proper care, resulting in a generally more severe medical and functional picture.

Thus, it is not necessary for us to consider "socioeconomic" factors, which are ancillary to the determination of how the person is actually affected by his or her impairment(s). For the purpose of deciding disability, we need only know the nature and severity of the individual's impairment(s) and its effects on his or her functioning. We do not use factors like the quality of medical care or housing to determine whether a person is medically disabled, just as we would not use such factors to find a claimant not disabled.

However, in part because we agree with the commenters that many claimants have limited access to ongoing health care, we have clarified the documentation requirements in final 14.00D3 and 14.00D4, and 114.00D3 and 114.00D4 to make it clear that HIV infection or its manifestations may be documented without definitive laboratory evidence if the documentation is consistent with the prevailing state of medical knowledge and current medical practice and is consistent with the other evidence. We do not require specific diagnostic tests in all cases.

Comment: A few commenters proposed that we should also assess the effect of an HIV-infected individual's home situation on the ability to work when the individual is a parent caring for a child or children who also show symptoms of HIV and are, therefore, in need of more intensive care. These commenters observed that, because such children require frequent administration of medication and regular clinic visits and are not allowed to receive day care, they would be a burden on a healthy parent; parents with HIV infection are already required to miss work frequently because of their own conditions, and the situation is exacerbated when the parent must also take time off from work to care for sick children.

Response: We did not adopt the comment. Under the Act, disability must result from the individual's medically determinable impairment(s). We are, therefore, unable to provide for a finding of disability when an adult is unable to attend work because of the need to care for an ailing child and not because of a medically determinable impairment(s). However, when we consider the extent to which an individual's HIV-related manifestations affect his or her ability to function, we consider the individual's ability to care for her or his children.

Organization of the Listings

Comment: Many commenters requested that we simplify the HIV listings. Some commenters thought that it was unnecessary to publish all of the CDC's criteria for diagnosing AIDS in our listings because some of the CDC criteria are redundant. They pointed out, for example, that every manifestation in proposed Listings 14.08A and 114.08A was repeated somewhere in proposed Listings 14.08B–I and 114.08B–H; the only difference was that a person's manifestations would meet Listings 14.08A or 114.08A if the person did not have laboratory evidence confirming the presence of HIV infection, but would meet one of the other listings if he or she did have such evidence. The commenters noted that, whereas the CDC might have good reasons for distinguishing between the two situations, the fact was that we would find an individual who had one of these manifestations to be disabled under the listings whether or not there was laboratory evidence of HIV infection. Therefore, there was no reason for us to list the same manifestation more than once.

Some commenters said that this complexity had led to inconsistencies in the proposed rules. They pointed to various sections of the proposed listings where the same conditions and the same evidence needed to document those conditions were described in slightly different terms, suggesting that the criteria were different even though they clearly were not meant to be. They stated that these discrepancies and other inconsistencies in the language would be confusing to both adjudicators and the general public.

Some commenters pointed out repetitious language that we could delete (for instance, the statement "Documentation of HIV infection as described in 14.00D" at the beginning of every listing under proposed 14.08 and 114.08); others suggested ways to reorganize the listings. One of their comments said that dividing the proposed listing by pathogenic process did not increase the ease of reference and thought the repetition of section headings added clutter. The comment recommended that we combine the proposed listings into a single listing with all of the manifestations arranged alphabetically.

Many commenters objected to the many different proposed criteria for documenting the existence of the

various manifestations in the listings. We address the substantive comments in a separate section below, but as pertinent here, the commenters pointed out that the numerous specific criteria for documenting each of the different manifestations made the listings very complex and difficult to use.

Response: We adopted the comments. As we have already explained in the summary of the final provisions, we have simplified the language and organization of the final rules and have eliminated the redundancies of the proposed listings. In response to comments we describe later in this section, we removed all of the various specific requirements for documenting the presence of the manifestations in lieu of the guidance we now provide in final 14.00D4 and 114.00D4. We also revised the language throughout part A and part B to make them both internally consistent and consistent with each other where appropriate.

We chose to retain an organization that lists some of the manifestations under general headings for the type of organism, and others according to the affected body system or type of manifestation. We did not adopt the suggestion that we list all of the manifestations alphabetically, although we did try it to see if it would work. We found that an alphabetical list was more cumbersome than the system in these final rules. To begin with, the list was very long; there are over 50 separate named manifestations in final Listing 14.08. In addition, it was sometimes difficult to decide how a given impairment should be alphabetized (i.e., by specific organism, affected organ, or kind of manifestation), and in some cases, impairments that naturally seemed to group together (for example, cryptosporidiosis, isosporiasis, and microsporidiosis, which are all protozoans that cause diarrhea) were widely separated only because of the alphabetical artifice. Moreover, we believe that the system we decided to use in the final rules carries an advantage that simple alphabetization would not. By grouping impairments according to etiology where possible and, elsewhere, into other logical categories (such as body system or organ affected) we have provided implicit guidance that will be more useful for finding medical equivalence for unlisted manifestations than an alphabetized system would.

Comment: One comment suggested editorial revisions in 14.00D. The comment suggested that we consolidate the definition and description of HIV infection into one location, giving more emphasis to the progressive nature of the disease, that we consolidate all information about evaluation of HIV infection cases under the sequential evaluation process into one location, and that we eliminate superfluous language. The commenter provided alternative language for parts of proposed 14.00D.

Response: Although we have not adopted the specific language suggested in the comment, we have rewritten and reorganized all of the paragraphs in 14.00D of the final rule, and removed repetitious language. In the final rule, we have revised the definition of HIV infection in 14.00D1, consolidated the explanation of how to evaluate individuals with HIV infection under the sequential evaluation process in 14.00D6, and made other changes throughout 14.00D. We discuss these changes in greater detail in the explanation of the final rules and in response to public comments about specific issues addressed in final 14.00D.

Comment: One comment suggested that it was not necessary to list Hodgkin's and non-Hodgkin's lymphomas separately, as we had proposed in Listings 14.08I and 14.08J. The comment noted that, under the proposed rules, any individual with any type of lymphoma would be found to have an impairment that met a listing; therefore, it would be simpler to have one listing that included all lymphomas. Another comment said that we should provide separate criteria for immunoblastic sarcoma, which we had included with the lymphomas in proposed Listing 14.08I2, because there is a controversy over whether it is a true lymphoma.

Response: We adopted the first comment. Final Listing 14.08E3 now includes all lymphomas. In a parenthetical statement, the final listing names some of the various lymphomas we had proposed in the NPRM, but characterizes them as examples to emphasize that all lymphomas are included. This is because all lymphomas in HIV-infected individuals carry a poor prognosis. We made the same revisions in the childhood rules, at final Listing 114.08E3.

Even though we acknowledge that there is a dispute about whether immunoblastic sarcoma is a lymphoma, we did not adopt the second comment. Inasmuch as the prognosis is poor in all such cases with HIV infection and the mere existence of the manifestation establishes listing-level severity, there is no practical reason for establishing a separate listing under our rules.

Documentation

Comment: A number of commenters said that the proposed requirements for documentation of HIV infection were too difficult and burdensome to meet, especially for indigent persons who do not have a primary care physician and have inadequate access to health care. The commenters also said that the tests we required in the proposed rules to document a diagnosis of HIV infection are too expensive for indigent persons to afford, and that proposed 14.00D required individuals to undergo specific laboratory tests or invasive medical procedures to establish a diagnosis or meet the listing. Several commenters also expressed concern that requiring specific laboratory tests, such as an HIV antibody test or a CD4 count, might inappropriately cause denials or the early obsolescence of the criteria for establishing disability related to HIV infection. Several commenters suggested that we consider clinical judgment or generally acceptable means of diagnosis consistent with the current state of medical knowledge. One commenter suggested specific language about the standards for documenting HIV infection without laboratory evidence, and included suggested language for the fourth paragraph of proposed 14.00D to explain why a positive screening test for HIV infection, such as ELISA, needs confirmation by a more definitive test.

Response: We adopted the comments, even though we did not require as much testing as the commenters believed. For instance, in the fifth and sixth paragraphs of proposed 14.00D we explained that a diagnosis of HIV infection could be accepted without laboratory documentation based on the existence of a disease predictive of a defect in cell-mediated immunity with no known cause of diminished resistance to that disease. We also said that, in such cases, the documentation of HIV infection will rely on the clinical history, physical examination, exclusion of other causes for clinical abnormalities, and treating source opinion. We also added language to final 14.00D3a and 114.00D3a to explain why a positive ELISA test must be confirmed by a more definitive test.

However, recognizing the reality of limited access to health care for many individuals, we have revised and expanded the language in final 14.00D3b and 114.00D3b. Other acceptable documentation of HIV infection, to provide that the existence of HIV infection may be documented without definitive laboratory evidence when definitive laboratory evidence is not available. We did not adopt the

specific language suggested by one commenter. If no definitive laboratory evidence is available, documentation may be by medical history, clinical and laboratory findings, and diagnoses indicated in the medical evidence, provided that it is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. This would be true, for example, when an individual has an opportunistic disease predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to the disease (as we provided in the NPRM). We use the clause, "If no definitive laboratory evidence is available," in the final rules to make clear that we include individuals who may have undergone HIV testing anonymously or when there are privacy considerations. Of course, if laboratory tests have been performed and the results are available, we will make every reasonable effort to obtain them.

We have also made other changes in the rules. We made similar revisions to our rules regarding the documentation of manifestations of HIV disease in final 14.00D4b and 114.00D4b. We also no longer include separate listings in final Listings 14.08 and 114.08 for manifestations of HIV with and without documentation.

Comment: Some commenters believed that diagnosis without definitive laboratory evidence should be accepted for every manifestation in the proposed listings. Other commenters requested clarification of which manifestations of HIV infection could be diagnosed without definitive laboratory evidence and which required definitive documentation.

Response: We did not adopt the comments. We cannot make a blanket rule that permits diagnosis of every listed manifestation in Listings 14.08 and 114.08 without definitive laboratory evidence because some of the manifestations, such as Salmonella bacteremia (Listing 14.08A3), lymphoma (Listing 14.08E3), nephropathy (Listing 14.08L), and radiographically documented sinusitis (Listing 14.08M6), will by their very nature require laboratory testing. However, we also do not want to specify exactly which of the manifestations may be diagnosed without definitive laboratory evidence because we want to leave the listings flexible to accommodate future medical practices. For this reason, we provide in final 14.00D3b and 14.00D4b (as well as the corresponding childhood sections) that the diagnosis of HIV and its manifestations may be established by methods of documentation that are "consistent with the prevailing state of medical knowledge and clinical practice and consistent with the other evidence."

Comment: Another comment said that the proposed rule's heavy reliance on documented HIV test results disadvantaged persons who test positive for HIV infection at an anonymous test site before developing HIV-related symptoms. Giving the example of an individual applying for disability benefits under title II after she tested positive for HIV infection at an anonymous test site and subsequently developed an HIV-related condition, the comment recommended that we apply later evidence of HIV infection retroactively to the date when HIV-related symptoms first developed.

Response: We partially adopted the comment. As we explained above, we introduced the clause, "If no definitive laboratory evidence is available," in final 14.00D3 and 14.00D4, and 114.00D3 and 114.00D4, to underscore the fact that we include the situation in which an individual may have undergone HIV testing anonymously.

We did not add explicit rules on determining retroactivity. Our general disability rules already permit us to establish an onset date in the past based on an inference drawn from the medical and other evidence in the case record. This does not mean, however, that we will find all individuals with HIV infection to be disabled from the moment that they tested positive for the HIV. As we have said, individuals with HIV infection who are otherwise asymptomatic and do not yet have any limitations are not disabled under the definition of disability in the Act. On the other hand, it is possible for us to find disabled as of the date the manifestation(s) first occurred, an individual who began experiencing manifestations of HIV infection before she knew that she had HIV infection. As we always do, we will determine an individual's onset date based on the facts of the specific case.

Treatment

Comment: A few commenters said that we did not address the adverse side effects caused by treatment or explain how to evaluate improvement caused by AZT therapy.

Response: Although we did include a general discussion of the need to consider the effects of treatment in the fourteenth paragraph of proposed 14.00D, we have expanded the discussion in final 14.00D7, Effect of treatment, in response to the comments. The final section contains three paragraphs. The first paragraph stresses the importance of considering both the positive and negative effects of treatment. In the paragraph, we mention antiretroviral agents as an example of a type of treatment that may ameliorate the condition or cause side effects. AZT is a kind of antiretroviral agent; we did not mention it specifically because we would like the rules to remain current if new treatments are devised in the future that supplant the use of AZT.

In the second and third paragraphs of the final rule, we provide guidance about how to evaluate the effects of treatment. We stress the need to take into consideration on a case-by-case basis both the positive and negative effects of treatment on the individual's ability to function. In these same paragraphs, we also point out that some individuals may respond to treatment more successfully than others and that the effects of treatment may be temporary or long-term. As in the NPRM, the final section provides that it is essential to obtain a specific description of the drugs or treatment given, and a description of the complications or any other response to treatment.

Equivalence

Comment: A few commenters suggested that we include in the listing preface more instructions to be used in determining when unlisted conditions equal the severity of listed conditions. They said that an applicant would have no way of knowing what he or she would have to prove, because program physicians determine whether an unlisted illness has a level of severity equivalent to a listed impairment. One of their comments suggested that, even though such things are not amenable to exact quantitative measurement, the approximate levels of pain, fatigue, and physical impairment associated with each listed illness, along with any other relevant factors, such as frequency and duration of episodes, could be specified, so any illness that meets the least restrictive of these descriptions could qualify as a disability.

Response: We did not add guidance to the listings about how to determine equivalence, but we have provided more of the kind of detail the commenters requested in the final rules. We do not provide substantive instructions for determining equivalence in any of the listings sections in part A or part B. We have separate rules in §§ 404.1526, 416.926, and 416.926a of our regulations which set forth criteria for determining equivalence. The rules on equivalence include rules in § 416.926a for assessing a child's functional limitations to determine whether they are the same as

the disabling functional consequences of any impairment in the listings.

The majority of our listings describe conditions for which medical criteria can be specified that are of such severity that it is unnecessary to consider the kinds of factors mentioned by the commenters. Final Listings 14.08 and 114.08 are no exception; the criteria for all of the manifestations in Listings 14.08A–M and 114.08A–N are met without the need to consider or specify whether there are symptoms or limitations; the levels of fatigue, pain, or "physical impairment" these impairments may cause are implicit in the listings. Only final Listings 14.08N and 114.08O, which employ functional criteria as a measure of severity, require such considerations. As we have already explained, we have extensively revised the functional rules in response to these and other comments, and we believe that we have provided more detail about the kinds of symptoms and the extent of limitations necessary to meet these listings within the listings themselves and in 14.00D and 114.00D.

In addition to symptoms (such as fatigue and pain) and limitations, the commenters also suggested that we better define other factors, such as the frequency and duration of episodes mentioned in various listings. We believe we have responded to this comment as well in the extensive revisions in final 14.00D and 114.00D. In these sections, we have, among other changes, provided definitions of the terms "resistant to treatment" and "recurrent," included language about the need to consider an individual's medical and functional status on a longitudinal basis, and provided explicit guidance (in final 14.00D8) about the meaning of the term "repeated" in final Listing 14.08N. In the listings themselves, we added specific criteria for the frequency, duration, and severity of episodes of manifestations wherever it was relevant. For example, final Listings 14.08A5 and 114.08A6 specify that the multiple or recurrent bacterial infections must require hospitalization or intravenous antibiotic treatment at least 3 times in 1 year.

Finally, an individual does not have to know what he or she has to prove to us in order for us to make a finding of equivalence or any other finding regarding disability. We assist the individual by requesting the evidence we need for our determination. Moreover, an individual does not have to "prove" equivalence to us to be found disabled. If we determine that the individual's impairment(s) is equivalent in severity to a listed impairment, we will find that the individual is disabled. However, if we determine that an individual's impairment or impairments are "severe," but that they are not listed and are not equivalent in severity to a listed impairment, our evaluation will proceed through the final steps of the sequential evaluation process before we make any determination about whether the individual is disabled.

Proposed 14.08M, 114.08L, and 114.08M: The Functional Listings

Proposed 14.08M1–M3, 114.08L1–L2, and 114.08M1–M3: The Medical Criteria

Comment: A number of commenters said that the manifestations of HIV infection in proposed Listings 14.08M2 and 14.08M3, 114.08L1 and 114.08L2, and 114.08M2 and 114.08M3 were severe enough to be disabling without meeting a functional test, or had their own functional ramifications. Some commenters indicated that the manner in which the diseases were ranked did not accurately reflect the true disabling effects of some of the conditions. A number of commenters specifically questioned the need for functional requirements for people with Kaposi's sarcoma in proposed Listing 14.08M2h. Some commenters noted that there was a range of severity for Kaposi's sarcoma. (CD4 lymphocyte count, the other criterion associated with the functional criteria in proposed Listings 14.08M1 and 114.08M1, is addressed in a separate comment and response, below.)

Some commenters thought that our use of the terms "persistent" and "resistant" to describe the severity of the manifestations was confusing. They said we should define the terms.

Response: We adopted many of the comments. As we have already explained in the summary of the final provisions above, we devised stand-alone medical listings for most of the manifestations we had proposed in the functional listings. We also removed all of the specific manifestations we had proposed to list in lieu of more general descriptive rules that include any kind of manifestation of HIV infection, not only those that were in the proposed functional listings. Our changes were based on the public comments, additional medical information received from doctors—including pediatricians and physicians specializing in the treatment of HIV infection in women—and from other professionals with expertise in treating and studying individuals with HIV infection.

We converted all eight HIV manifestations included in proposed Listings 14.08M2, 114.08L1, and 114.08M2 into stand-alone listing criteria. We agreed for the most part with commenters who stated that the first six of the eight listed manifestations would be listing-level impairments if they were "persistent and/or resistant to therapy," as described in the proposed rules, without the need to consider functional deficits. In the final listings, pulmonary tuberculosis is in Listings 14.08A1 and 114.08A1; pneumonia, sepsis, meningitis, septic arthritis, and endocarditis are in final Listings 14.08M and 114.08N.

The final rules require that these conditions be "resistant to treatment" instead of "persistent and/or resistant to therapy." We made this change for a number of reasons. We used the word "treatment" instead of "therapy" only to make the language of the final rules consistent with other sections in the listings; this is merely an editorial change. The phrase "persistent and/or resistant to therapy," however, was redundant and could have been confusing. The phrase "and/or" was unnecessary in that, because of the disjunctive, "or," a person would have had an impairment that met the listings with either persistence or resistance to treatment; therefore, the conjunctive, "and," was superfluous. Also, in most situations, "persistent" would have been redundant of "resistant to therapy" because, if a person was receiving treatment and the manifestation persisted, the manifestation was implicitly resistant to treatment.

Moreover, the word "persistent" was also ambiguous and difficult to define. Some manifestations can respond to treatment without being cured. They can technically "persist" because the organisms that cause them are still present, but not necessarily be disabling. If we said the manifestations had to persist at a disabling level, the individual would have to be in treatment and the manifestation resistant to treatment: Individuals with persistent disabling pneumonia, pulmonary tuberculosis, sepsis, and meningitis require treatment or they will die; septic arthritis is usually a sign of a more pervasive infection and is so debilitating that the individual would also require treatment.

Therefore, we deleted the word, "persistent," from the final rules. However, we also provided alternative criteria for the manifestations in final Listings 14.08M and 114.08N by which individuals whose manifestations respond to treatment only to recur may establish listing-level severity.

We did not agree with the commenters who thought that we could list the remaining two manifestations

proposed in Listings 14.08M2, 114.08L1 and 114.08M2, peripheral neuropathy and Kaposi's sarcoma, without some other indication of medical severity. Both Kaposi's sarcoma and peripheral neuropathy vary widely in severity. These disorders, even when not amenable to treatment, may not seriously impair functioning, even in individuals with HIV infection. Therefore, the medical criteria we developed require more than resistance to treatment and are more descriptive of listing-level severity. The final criteria for evaluating Kaposi's sarcoma (final Listings 14.08E2 and 114.08E2) require more than limited superficial lesions; they require extensive oral lesions, or visceral involvement, or skin or mucous membrane lesions of sufficient severity to satisfy the criteria in final Listings 14.08F and 114.08F, conditions of the skin or mucous membranes. Of course, the condition may also be evaluated under the final functional listings in 14.08N and 114.08O. In the case of peripheral neuropathy (final Listings 14.08H2 and 114.08H), the disorder must be assessed either under the appropriate neurological listings in 11.00 and 111.00 or on the basis of functional limitations under final Listings 14.08N and 114.08O. In order to make clear that HIV-related peripheral neuropathy may be evaluated under the neurological listings, we added cross-references to those listings sections in final Listings 14.08H2 and 114.08H.

In addition, we developed criteria for evaluating most of the other HIV manifestations in proposed Listings 14.08M3, 114.08L2 and 114.08M3. As we did for peripheral neuropathy, we required the three blood disorders now in final Listings 14.08G and 114.08G—anemia (proposed Listings 14.08M3a and 114.08M3a), granulocytopenia (proposed Listings 14.08M3b and 114.08M3b), and thrombocytopenia (proposed Listings 14.08M3c and 114.08M3c)—to meet the criteria of other listings (in 7.00 and 107.00, the listings for the hemic and lymphatic system). Even in the case of an individual with HIV infection, the blood count figures alone do not show how an individual is able to function.

We also developed stand-alone medical listings for mucosal candidiasis, including vulvovaginal candidiasis (proposed Listings 14.08M3f and 114.08M3f, final Listings 14.08F and 114.08F), Herpes zoster (proposed Listings 14.08M3h and 114.08M3h, final Listings 14.08D and 114.08D), dermatological conditions such as eczema and psoriasis (proposed Listings 14.08M3i, 114.08L2g, and 114.08M3i, final Listings 14.08F and 114.08F), diarrhea (proposed Listings 14.08M3j, 114.08L2f, and 114.08M3j, final Listings 14.08J and 114.08J), and radiographically documented sinusitis (proposed Listings 14.08M3k, 114.08L2i, and 114.08M3k, final Listings 14.08M6 and 114.08N6).

Although we agree with the comment that the remaining manifestations in proposed Listings 14.08M3, 114.08L2 and 114.08M3 (fever, weight loss, hepatomegaly, splenomegaly, parotitis, oral hairy leukoplakia, and lymphadenopathy) can have functional ramifications, their effects on an adult's ability to work or a child's ability to function in an age-appropriate manner vary from individual to individual and, thus, listing-level severity cannot be defined in solely medical terms. Therefore, these manifestations, along with other manifestations of HIV infection that do not meet the criteria in final Listings 14.08A–M or 114.08A–114.08N, will continue to be evaluated with functional criteria under final Listings 14.08N and 114.08O.

Comment: Another comment questioned the addition of functional requirements to the criteria for HIV wasting syndrome.

Response: We did not list HIV wasting syndrome in proposed Listing 14.08M3 (or proposed childhood Listing 114.08M3); we proposed a separate Listing 14.08H (final Listing 14.08I) which provided that any person with HIV wasting syndrome had an impairment that met the listing. In the childhood listings, we provided a cross-reference to the proposed adult rule, in the ninth paragraph of proposed 114.00C.

We believe that the commenters misunderstood our intent in proposed Listings 14.08M3 and 114.08M3. HIV wasting syndrome is defined as an involuntary weight loss of more than 10 percent of baseline body weight and either chronic diarrhea or chronic weakness and documented fever greater than 100.4° F (38° C) for the majority of 1 month or longer. Although it is true that in proposed Listings 14.08M3 and 114.08M3 we listed all three of the criteria that may define HIV wasting syndrome (fever, weight loss, and diarrhea), we did not intend to list true HIV wasting syndrome in the functional listing but a lesser manifestation of HIV infection. An individual with true HIV wasting syndrome would have already been found to have an impairment that met the criteria of proposed Listing 14.08H. The individuals who could have met the criteria of proposed Listing 14.08M3 were those who did not have all of the findings needed to define HIV wasting syndrome, but who were nevertheless significantly limited in their functioning because of their manifestations.

For reasons we have already explained in the summary of provisions, we have established separate listings, final Listings 14.08J and 114.08J, to make diarrhea a stand-alone medical condition, but we have not listed fever and weight loss separately, except insofar as they define HIV wasting syndrome. However, these two medical findings, as well as diarrhea of lesser severity than in the stand-alone medical listings, may still be found to be of listing-level severity under final Listings 14.08N and 114.08O.

Comment: Some commenters suggested that we consider additional manifestations of HIV infection in conjunction with the functional standards in proposed Listing 14.08M3. The commenters suggested many specific manifestations, including joint aches, arthritis, or arthralgias, recurrent cystitis, fatigue, chronic headaches, chronic sleep disturbance, chronic shortness of breath or exertional dyspnea, and HIV-related mental disorders. Various comments on the childhood listings also suggested that we add chronic and recurrent otitis media associated with functional limitations.

Response: As we have said, instead of making the lists longer, but still finite, we decided to revise the functional listings so that they would include any possible manifestation of HIV infection. Therefore, we no longer list any manifestations explicitly, only a few examples. The revisions in final Listing 114.08O are sufficient to allow adjudicators to evaluate chronic and recurrent otitis media when it is a manifestation of HIV infection. Additionally, sequelae from otitis media, such as hearing loss or brain abscess, or any other manifestations of HIV infection in children or adults, can be evaluated under the appropriate listing or at the last steps of the sequential evaluation processes.

Comment: A number of commenters believed that the CD4 lymphocyte count required in proposed Listings 14.08M1 and 114.08M1 should be considered enough to establish listing-level severity without the additional requirement to meet the functional criteria. Some commenters stated that the proposed CD4 count less than or equal to 200 cells/mm^3 (or 14 percent or less lymphocytes) was too low, especially if we linked it to functioning; others stated that it was too high.

Many suggested various alternatives. At least one commenter asked us not to use any particular CD4 count as a

measure of disability at all because each individual situation is different; the commenter said that it would be unfair to label as disabled all individuals with low CD4 counts, when many such individuals are still functioning well. One commenter suggested a specific description of the standard for using CD4 lymphocyte counts, and suggested specific language to clarify the discussion of CD4 lymphocyte counts in the third paragraph of proposed 14.00D.

Response: We have deleted the CD4 criterion from the final rules. We realize that, although a decreased CD4 count is a gauge of an individual's potential for developing a serious opportunistic infection or other manifestation of HIV, with improved treatment and prophylaxis for certain opportunistic diseases one cannot reliably predict when an individual will develop a disabling manifestation. Further, the laboratory finding does not show whether the individual is functionally limited. There are many cases of individuals with very low CD4 counts (often far below 200) who exhibited few or no functional restrictions, and other individuals with much higher CD4 counts who were seriously impaired. Indeed, we received comments from such an individual, who related his own story of living with HIV infection and working even though his CD4 count was below 100.

We agreed completely with the many commenters who stated that such individuals are at risk of becoming disabled. However, our disability programs require an assessment of whether an individual is disabled currently, without regard to whether the individual may become disabled at some point in the future. Because there is so much variability in the state of health and functioning of individuals with any given CD4 count we could not adopt the suggestions to use a specific CD4 count alone (at any level) as a listing criterion.

Proposed 14.08M4, 114.08L3, and 114.08M4: The Functional Criteria

Comment: Many commenters said that the functional criteria were overly burdensome and restrictive and should be eliminated entirely. Some of these commenters believed that linking manifestations of HIV disease to a functional test ignored the progressive nature of the disease and created a higher level of severity than established by other listings. One commenter suggested extensive revisions in the paragraphs explaining the functional criteria in proposed 14.00D, and provided specific language for such revisions.

Response: For reasons we have given in the explanation of the final rules, we did not eliminate the functional criteria. Our intent in proposing the functional criteria in Listings 14.08M, 114.08L, and 114.08M was to include in the listings many individuals for whom we thought we could not provide solely medical criteria. For instance, the functional listings include a group of individuals who would be very difficult to describe in strictly medical terms—individuals who become ill then improve, only to repeatedly become ill again, either with the same manifestation of HIV infection or with something different. The functional listings also provide a listing for those individuals whose impairments might not be at listing-level severity for all individuals, but that are actually of listing-level severity for the particular individuals given their effects, such as pain, other symptoms, and the consequences of medication, that vary greatly with the individual. They help to ensure a finding of disability for any person whose impairment(s) actually prevents him or her from engaging in any gainful activity, or of any SSI claimant child whose impairment(s) actually prevents him or her from independently, appropriately, and effectively engaging in age-appropriate activities, even though that impairment(s) might not impose similar limitations on other individuals.

Moreover, we believe that, in view of the fact that we have made most of the proposed manifestations into stand-alone medical listings, we have accommodated the comments that asked us to delete the functional listings. The functional criteria now only provide another way to find disabled individuals who have most of the manifestations we proposed in Listings 14.08M, 114.08L, and 114.08M.

Based on other comments, however, we have significantly modified the proposed functional criteria to make them more applicable to cases involving HIV infection and to better express our original intent. We have also revised the paragraphs in the final rules that explain the functional criteria (final 14.00D8). The functional criteria for both adults and children are no longer tied to a finite list of specific medical conditions; any manifestation or combination of manifestations may now be evaluated under this listing. Additionally, the final rules require an adult to demonstrate limitations of functioning in only one of three areas of functioning, rather than the proposed two of four. We describe these rules and our reasons for the changes in subsequent comments.

Comment: Many commenters pointed out that under the functional equivalence policy in § 416.926a(b)(3), any child who has listing-level deficits in the functional domains of the listings in 112.00 is considered disabled regardless of the nature of the impairment. They said it was, therefore, not necessary to include the functional criteria in proposed Listings 114.08L and 114.08M, because these criteria did no more than recodify existing policy.

Response: We disagree. The part B listings are used to evaluate claims filed under both title II and title XVI of the Act if the claimant is under age 18. The functional equivalence policy in § 416.926a(b)(3), however, applies only to claims for SSI filed under title XVI. Even though SSI claims constitute the great majority of childhood disability applications, it is possible for individuals under age 18 to apply for disability benefits (both as disabled minor children and as workers) under title II. Functional equivalence does not apply in these cases, and such children could be disadvantaged by removal of the rule.

Comment: Many commenters said that the proposed HIV listing was the first and only adult physical impairment listing to require a functional test in order to qualify for benefits, and to do so violated various antidiscrimination laws. One comment indicated that the listing should exist solely to provide SSA with medical criteria for the purpose of making disability determinations.

Response: The commenters were not correct. Even though the listing for evaluation of HIV infection is the first to contain functional criteria similar to those in the mental body system, other physical body system listings, such as (but not limited to) several in the neurological and musculoskeletal body systems, include functional criteria among their requirements. We also believe that we have the statutory authority to include functional criteria in the listings because the listings are not intended to include all possible impairments (see, e.g., *Sullivan* v. *Zebley*, 493 U.S 521 (1990)) and because our rules ensure that all disabled individuals have an opportunity to establish that they are disabled under the Act. In any case, we have provided stand-alone criteria for most of the manifestations we had proposed to link to functioning, as well as some others that affect women, girls, and other groups of people with HIV infection. Therefore, the final rules do not discriminate against any group of people, but broaden the listings to include more people.

We also do not agree that the listings may include only medical criteria. Functional criteria not only provide an important avenue to allow individuals whose HIV-related conditions impose functional limitations, but, perhaps most importantly, they reflect a true outcome of the illness. Even the strictly medical criteria in the listings have implied functional consequences. By definition, claimants with impairments meeting or equaling listed medical criteria cannot work, and this inability to work—a functional assessment—is the underlying statutory criterion on which the entire disability program is based.

Comment: Several commenters said that requiring functional criteria in the adult listing would prevent adults with HIV infection from establishing their disabilities at the earliest possible point in time. They said that the functional criteria could cause the same delays for gathering and weighing evidence as the commenters believe occur when we assess residual functional capacity when a claimant's severe impairment(s) does not meet or equal in severity any listing. Some commenters said that the requirement for 2 months' persistence of the manifestations in proposed Listings 14.08M3 and 114.08M3 would create a 2-month processing delay.

Response: The effect of the functional criteria may actually be to expedite case processing. The functional criteria do not come into play unless the individual does not have an impairment that meets the requirements of one of the preceding listings. We also follow a general policy in all cases of curtailing development when there is sufficient evidence to properly allow a claim; if the evidence shows medical equivalence to one of the listings, we would not further develop the claim simply to establish whether the individual has an impairment that meets final Listing 14.08N. Therefore, the provision applies only to individuals for whom we would have to assess functioning at later steps of the sequential evaluation process: Individuals who have severe impairments that do not meet the medical listings and for whom we would have to perform a residual functional capacity assessment if we did not have this listing.

The assessment of residual functional capacity is a much more refined evaluation than is required under final Listing 14.08N. Whereas final Listing 14.08N only requires a judgment about whether an individual is markedly impaired in a broad area of functioning, a residual functional capacity assessment is a detailed evaluation of the claimant's ability to do particular physical and mental work-related activities. Both evaluations rely on the same kinds of evidence, so the new listing will not require additional time spent to develop evidence. If anything, individuals who meet this listing may not have to present as much evidence of their ability to function as they would have to for the more detailed residual functional capacity assessment. Furthermore, the actual assessment of functioning under the listing is quicker than the residual functional capacity assessment and does not require evaluation under the medical-vocational rules.

In fact, there has been no evidence that using functional criteria since December 17, 1991, has delayed decisions made on cases involving HIV infection. We updated our procedures for evaluating HIV infection under an interpretive ruling we have been following since December 17, 1991 (Social Security Ruling (SSR) 91–8p, "Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection," 56 FR 65498, December 17, 1991). The experience we have using SSR 91–8p indicates that claims involving HIV infection are being processed expeditiously. We believe, therefore, that—far from delaying case adjudication—the new listing will speed the processing of many claims and permit more cases to be adjudicated at the listing level than would otherwise be possible.

With regard to the comment about the delays that might have been caused by the criteria requiring 2 months' persistence of the manifestations in proposed Listings 14.08M3 and 114.08M3, we have deleted those rules, as already explained.

Comment: Many commenters said that if we retained functional criteria in the final adult and childhood listings, the requirement should be to demonstrate marked limitations in only one area of functioning (for adults) or one functional domain (for children). They thought that for adults this was equivalent to the threshold we previously used in our operating instructions in effect prior to December 17, 1991. Some commenters were particularly concerned that the proposed rules for adults would be stricter than the rules they would replace by requiring a higher level of functional impairment.

Response: Even though we have changed the standard for adults to require marked limitations in one of the three functional areas, we do not agree that the proposed rules set a higher level of severity than was in our previous operating instructions, nor was that our intent. Indeed, under our prior instructions, an individual needed help with most activity, including climbing stairs, shopping, cooking, and housework, in order to establish a "marked" restriction of activities of daily living. In the nineteenth paragraph of 14.00D of the NPRM, an individual who was unable to perform activities independently most of the time had a "marked" limitation of activities of daily living. We further defined a "marked" limitation in the seventeenth paragraph of the section as arising "when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively."

More fundamentally, and as we have already explained in the summary of provisions above, the proposed functional criteria for adults effectively permitted a finding of disability based on marked limitations in only one functional area if the individual also suffered episodic bouts of illness. Whereas activities of daily living, social functioning, and concentration, persistence or pace clearly describe functioning, the fourth area, repeated episodes of deterioration or decompensation in work or work-like settings, referred to episodes of illness. (This is not true for people with mental disorders, where the episodes of deterioration or decompensation may result from the stress of the work or work-like setting, but it is true in the context of HIV infection.) Thus, an individual who experienced the required episodes of illness in proposed Listing 14.08M4d and met only one of the three functional criteria in proposed Listing 14.08M4a–c would have had an impairment that met the listing.

This is not to say that all individuals could have met the listing in this way. Some would not have suffered episodic manifestations and, therefore, would have had to meet two of the three functional criteria in proposed Listing 14.08M4a–c. However, it has been our experience, contrary to the beliefs of many commenters, that individuals who are markedly limited in one of the areas of functioning also demonstrate marked limitations in one of the other areas; the requirement for limitations in two areas merely validated the finding of disability. Indeed, we have been using the same procedures under SSR 91–8p and have allowed many cases under this interpretive ruling.

As we have already explained in the summary, and in response to the comments, we revised final Listing

14.08M inasmuch as the fourth proposed functional criterion described the universe of individuals we were trying to capture in the listing. In the final rule, the fourth criterion from the proposed listing is now the threshold criterion for the listing and the individual must meet one of three functional criteria.

A similar change in the number of functional domains that must be limited in a childhood case is not appropriate. The criteria a child has to meet to be considered under the listing (i.e., the child must have a manifestation of HIV infection that does not satisfy any of the criteria in final Listings 114.08A–N) are not repeated in the functional domains, are not analogous to the areas of functioning used in evaluating adult cases, and differ with the age of the child.

Comment: Many commenters thought that the "marked" level of restriction required in the proposed adult functional criteria was too severe. They were particularly critical of the definition of "marked" as occurring "most of the time" in the paragraphs that defined the first three functional criteria. Some commenters suggested that "marked" connoted a level of functional restriction commensurate with almost total incapacitation, i.e., bed confinement or requiring nursing home care, and said that this reflected a higher level of restriction than is required to establish disability under the Act. Some also suggested that individuals would be disabled even if they were not limited "most of the time" but were limited to some lesser extent.

Response: We never intended "marked" to be interpreted as requiring total incapacitation (as, indeed, it does not in the mental body system listings). We proposed language to underscore this intent in the seventeenth paragraph of 14.00D in the NPRM, which, with minor language changes, is now the fifth paragraph of 14.00D8 in the final rules. In that paragraph, we first defined "marked" as being on a continuum between "moderate" and "extreme" to make the point that there is a more severe limitation than a "marked" limitation; that is, an "extreme" limitation. If "marked" meant total debility, it clearly would have left no room on the scale of severity for "extreme" limitation. We then stated that a marked limitation could arise "when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively." By indicating that a marked limitation might result from limitations of only several activities, or even only one activity, and by using the phrase "seriously interfere," we again meant to say that the individual need not have been totally debilitated.

We did, however, intend to establish a level of limitation that is higher than is required to establish disability under the Act. This is because all listed impairments in part A and part B define a more severe level of disability than is defined in the Act. The standard of disability in the statute is based on an inability to engage in "any substantial gainful activity" (see sections 216(i), 223(d), and 1614(a) of the Act). Under §§ 404.1525(a) and 416.925(a) of our regulations, however, we explain that the listings describe impairments that are considered severe enough to prevent a person from doing "any gainful activity." Similarly, the regulations defining disability in children provide that "comparable severity" to a disability in an adult means a substantial reduction in the ability to function independently, appropriately, and effectively in an age-appropriate manner (see § 416.924(a)). The listings, however, describe impairments that "prevent" a child from functioning independently, appropriately, and effectively in an age-appropriate manner (see §§ 416.924(e) and 416.926a(a)).

The point is that the listings are meant to be a screening device by which we can decide relatively quickly that an individual is disabled, without the need to proceed to the final steps of the sequential evaluation processes. It is at the final steps of the sequential evaluation processes for adults and children that we determine whether individuals have impairments that meet the statutory definition of disability. Disability under the listings is so severe that we know that there is no need to proceed further because a finding of disability would result even if we proceeded through all the steps of the sequential evaluation processes.

Nevertheless, the comments made us realize two things: First, that we could have more clearly stated that "marked" does not mean total incapacity, and second, that the standard of "most of the time" was unnecessarily inflexible. Consequently, we revised the description of "marked" to explain our intent more clearly. We now state plainly in the fifth paragraph of final 14.00D8 that "an individual need not be totally precluded from performing an activity to have a marked limitation * * *." We also added language in the fifth paragraph that describes "marked" in qualitative terms and makes clear that a "marked" restriction in function is not defined by any frequency of occurrences but by the degree of interference with function. We also state plainly that "marked" is not intended to imply that a person is confined to bed, hospitalized, or in a nursing home. This allows us the flexibility to determine whether a limitation is "marked" on a case-by-case basis. In each of the sixth, seventh, and eighth paragraphs of final 14.00D8 (which define the three functional areas, and correspond to the nineteenth, twentieth, and twenty-first paragraphs of proposed 14.00D) we eliminated the sentences that included the phrase "most of the time" and revised the remaining discussions to be more descriptive of our intent.

We did not simply revise "most of the time" to a shorter period, as some commenters suggested, because we believe the attempt was fraught with the same pitfalls that the commenters pointed out for the phrase we proposed. Furthermore, because we say that "marked" may involve only one activity or several activities, a criterion for less frequent interference could result in unintended variations in severity levels depending on which activities or other functions were limited.

Comment: Many commenters thought that it was inappropriate to use, nearly verbatim, the functional criteria language from the mental listings to describe the functional limitations in proposed Listings 14.08M, 114.08L and 114.08M. Although some commenters said they could appreciate the need to link functional limitations to physical disorders, they thought it was inappropriate to apply mental listing criteria to physical impairments.

Response: We do not agree that it is inappropriate to apply these functional criteria to physical disorders because the criteria are generic; they do not describe mental functions, but broad areas of functioning that are relevant to any adult's ability to work or any child's ability to independently, appropriately and effectively engage in age-appropriate activity. As we have explained in the summary of the final rules, these activities describe what people do and how well they do it on a day-to-day basis. For our purposes, it is immaterial whether an individual has difficulty doing chores or maintaining concentration because of a mental disorder or because of fatigue, weakness, pain, headaches, frequent diarrhea, or any other physical problem; the person still has the limitation that results from a medically determinable impairment(s).

However, as we have also said, we have modified the proposed language in

final 14.00D8 to make it even more specific to individuals with HIV infection. As we have previously explained, we also removed the fourth "functional" criterion in proposed Listing 14.08M4d.

We also repeat that, by revising proposed Listings 14.08M, 114.08L and 114.08M to make most of the proposed manifestations into stand-alone medical listings and to broaden the applicability of the final functional listings to include any manifestation or combinations of manifestations, final Listings 14.08N and 114.08O are only advantageous to claimants. They merely provide another means for people to show that they are disabled under the listings.

Comment: A number of commenters specifically commented that the area of social functioning is meant to measure an individual's psychiatric condition and is not appropriate for the evaluation of HIV. They were especially concerned that an individual could be denied disability benefits because he or she "socialized" with family and friends.

Response: The comments misunderstood our intent; we have, therefore, clarified the rules. We have always recognized that there is a difference between visiting with family and close friends, who may make special allowances for an impaired individual, and independent social functioning. Furthermore, the ability to interact with other people can be affected by a physical impairment. For instance, an individual who is fatigued may have difficulty going out or sustaining conversation. In addition, many individuals with manifestations of HIV infection do have mental findings (such as anxiety, depression, and apathy) that can interfere with their social functioning. Even if the mental findings are not manifestations of HIV infection, or are the only manifestations of the HIV infection, we still consider their effect on the individual's functioning together with any other manifestations.

To make our intent clearer, we have revised the language of the seventh paragraph of final 14.00D8 in response to the comments. Final 14.00D8 states that marked difficulty of social functioning means that an individual "cannot engage in social interaction on a sustained basis (even though he or she is able to communicate with close friends or relatives) * * *." It is also important to note that, under the final listing, social functioning is only one area of functioning among three, each one of which can establish disability at the listing level.

Comment: Several commenters thought that the fourth functional test requirement in the adult listing, i.e., "repeated episodes of decompensation," was too severe and went beyond what is necessary to prevent an adult from working. The commenters suggested that this criterion be revised to more accurately reflect the reality of the exacerbations and remissions in HIV-related illnesses and the need to be absent from work for treatment.

Response: We have already explained how we revised proposed Listing 14.08M in the summary of provisions and the foregoing responses. In the third paragraph of final 14.08D8, we retained the provision for manifestations occurring on an average of 3 times a year, or once every 4 months, and each lasting at least 2 weeks, but changed it to one provision among several alternatives instead of an absolute requirement. We now also provide that the manifestations may last for less than 2 weeks and occur substantially more frequently than 3 times a year or every 4 months, or that they may occur less frequently than 3 times a year or once every 4 months but last substantially longer than 2 weeks each time. We believe this better reflects the variety of patterns of episodic illness experienced by persons with HIV infection.

We do not agree, however, that the proposed criterion was incompatible with the ability to work in and of itself. It described an individual who missed 6 weeks of work during the course of a whole year because of illness. Although we do not mean to suggest that missing work for 2 weeks at a time 3 times in a year is not serious, we do not believe that it is so serious in itself that we could conclude that the individual was disabled for 12 months, as required by the statute. This is why we also require an accompanying indication of marked functional limitations in the final rule.

Comment: Several commenters stated that in setting the adult functional standards, we should evaluate individuals based on both current functional ability and likely future loss of capacity.

Response: The Act requires that an individual be disabled during the period covered by the individual's application. This usually means that the individual must be currently disabled, although we may find disability in the past under title II within the time limits covered by the application. However, we are never permitted to find an individual disabled based on a prediction that the individual will become disabled in the future. There is no provision in the statute that would permit us to overlook a claimant's current favorable level of function because it is expected his or her condition will worsen at some future time. Our policy is to advise individuals to reapply for disability benefits at such time as the condition precludes substantial work activity.

Comment: Numerous commenters suggested that we use functional tests like the Karnofsky Performance Status instead of the proposed functional criteria.

Response: We did not adopt the comments. The Karnofsky Performance Status is not a "functional test," but a physician's estimate of functional status. We do not think, however, that the Karnofsky or other available tests are sufficiently broad or objective to use in place of our functional criteria, as the standard for measuring functional capacity in HIV-related disability claims.

Comment: Several commenters said that we should develop a special form to capture information regarding a claimant's functional limitations and train our Field Office and State agency personnel to properly elicit this information. Some were interested in working with us to develop the form, as well as to develop a national 800-number and telefax service for the dictation of physician narratives and medical documentation.

Response: Developing evidence of functional limitations is not new to Field Office or State agency employees. The disability application forms include basic questions regarding evidence of functional limitations and are sufficient to make a determination in many cases. The State agencies develop additional evidence regarding function from a variety of medical and non-medical sources when that is necessary. Although we appreciate the commenters' offers, at this time we do not believe a special form is needed for either the Field Offices or the State agencies. Also, because medical determinations are made locally, a national telephone/telefax service for physician narratives and medical documentation would not be practical. We believe these kinds of services are best when designed and implemented locally in order to meet the particular needs of the area.

HIV Manifestations Suggested as Additions to the Listings

Comment: A number of commenters suggested adding other manifestations of HIV infection to the listings, such as: anemia, arthritis, oral candidiasis (oral thrush), chronic shortness of breath or exertional dyspnea, chronic sleep disorders, hepatitis (including hepatitis caused by cytomegalovirus), extrapulmonary pneumocystis, fatigue, HIV myositis, leukemia, lymphocytic

interstitial pneumonitis, microsporidiosis, mucormycosis, neoplasia, pancytopenia, pulmonary aspergillosis, recurrent giardiasis, renal failure, squamous carcinoma of the genitals, side effects of antiretroviral therapy, syphilis and neurosyphilis. (We discuss other suggested additions to the listings—including several that are specific to women—in subsequent comments and responses.)

Some of these commenters suggested specific criteria to be included (e.g., chronic anemia with persistent hemoglobin of less than 10 percent or hematocrit of less than 30 percent, or requiring transfusions more often than twice yearly). Other commenters simply identified the symptoms (e.g., dyspnea) or conditions they thought should be included, without describing any particular level of severity. When a commenter suggested adding a medical condition to the listing but did not include criteria describing impairment severity, we were often unable to discern whether the commenter was asking that we develop listing criteria for that manifestation, or asking that we consider the mere existence of the manifestation in an individual with HIV infection to be listing-level severity. In order to ensure that we considered every comment, we considered both possible interpretations of the comment.

Response: We adopted some of these comments, partially adopted others, and did not adopt others.

In response to the comments, we added the following manifestations of HIV infection to the listing without any qualifying criteria: Extrapulmonary pneumocystis carinii infection (final Listings 14.08C2 and 114.08C2); mucormycosis (final Listings 14.08B6 and 114.08B6); and aspergillosis (final Listings 14.08B1 and 114.08B1). An individual with HIV infection and any one of these manifestations has an impairment that meets the listing.

To the extent that the commenters were suggesting that we include any other manifestations in the HIV listings without any qualifying criteria, we did not adopt the suggestions. The information we obtained and the medical literature indicated that, although the other manifestations suggested by the commenters can be disabling, they need not be. Consequently, the assessment of severity must be made based on criteria beyond the mere presence of the manifestation. In order to be responsive to the comments, we attempted to develop a listing-level standard for each suggested addition to the listings, using qualifying criteria to indicate impairment severity.

The listings now include microsporidiosis (final Listings 14.08C1 and 114.08C1), if it results in diarrhea lasting for 1 month or longer; and septic arthritis (final Listings 14.08M4 and 114.08N4) if it is resistant to treatment or requires hospitalization or intravenous treatment 3 or more times in 1 year. These criteria were developed based on the information we obtained.

Some of the HIV manifestations that commenters suggested as additions to the listings may be evaluated under existing listings; consequently, we did not add new criteria for them. These include: oral candidiasis (which is evaluated under final Listings 14.08F and 114.08F, Conditions of the skin or mucous membranes, or 14.08M and 114.08N, for other multiple infection, or under the appropriate body system listing); leukemia (which is evaluated under the criteria in Listing 7.11, 7.12, 13.27, or 107.11); giardiasis (which is evaluated under final Listings 14.08J and 114.08J); and pancytopenia (which is evaluated under final Listings 14.08G and 114.08G or under the criteria in 7.00ff and 107.00ff).

Syphilis and neurosyphilis are also manifestations that may be evaluated under existing listings. However, because of their frequency in individuals with HIV infection, we added Listings 14.08A4 and 114.08A4 to remind adjudicators that HIV infection can make this illness more difficult to treat and to ensure that they look for sequelae of the disease. For the same reason, we added Listings 14.08D5 and 114.08D5 for evaluating viral hepatitis. We did not distinguish in the final listings between CMV hepatitis and other forms; therefore, CMV hepatitis is included under these final listings.

The NPRM included criteria for evaluating various malignant neoplasms. Final Listings 14.08E and 114.08E are expressly for the evaluation of malignant neoplasms. The NPRM also included criteria for renal failure, in proposed Listing 14.08L. The general term "nephropathy" means disease of the kidneys and would, therefore, encompass renal (i.e., kidney) failure. Nephropathy is now included in both the adult and childhood listings at final Listings 14.08L and 114.08M, which are cross-references to the criteria in 6.00ff and 106.00ff.

We did not adopt the suggestions to add listing criteria for the following manifestations of HIV infection because the manifestations are either symptoms, signs, or medical findings that must be evaluated based on the underlying medical condition: dyspnea, sleep disorder, or fatigue.

We did not adopt the suggestion to include criteria for squamous cell carcinoma of the genitals because the condition is not necessarily disabling, even in an individual with HIV infection, and may be evaluated under the listings for malignant neoplasms in 13.00 and 113.00 or as other skin conditions under the criteria in final Listings 14.08F and 114.08F.

Likewise, HIV myositis and arthritis are not necessarily disabling in individuals with HIV infection, and these disorders may be evaluated under existing criteria in 1.00ff. HIV myositis may also be evaluated under the criteria in final Listings 14.05 and 114.05, and septic arthritis under the criteria in final Listings 14.08M and 114.08N.

The NPRM included criteria for lymphocytic interstitial pneumonia (LIP) in children. We did not adopt the suggestion to add criteria for adults because the condition is uncommon in adults, is usually accompanied by other manifestations of HIV infection, and would likely cause respiratory symptoms that could be evaluated appropriately under 3.00ff, or under final Listing 14.08N.

The term "recurrent cystitis" describes many different types of bladder inflammation that occur commonly in individuals who have HIV infection and individuals who do not. Evaluation under the listings will depend on the type of inflammation (e.g., bacterial cystitis may be evaluated under final Listings 14.08A5 and 114.08A6). Separate criteria for cystitis are not warranted because the condition is often not functionally limiting. If it is, and if it does not meet the criteria of any of the stand-alone medical listings, it may still meet the criteria of the functional listings, 14.08N and 114.08O.

In response to the comment about the side-effects of antiretroviral therapy, we supplemented the discussion of the effects of treatment in final 14.00D7 and 114.00D7, to make it clearer that we always consider the effects of treatment when evaluating disability. We have included "antiretroviral agents" as an example of treatment in these sections.

It is important to remember that any severe HIV manifestations not specifically included in the listings (including any of the manifestations discussed above that we declined to add) may still be evaluated based on their functional consequences under final Listings 14.08N and 114.08O, or at later steps of the sequential evaluation processes for adults and children.

Comment: A few commenters questioned whether the HIV infection listing adequately considered the effects of mental disorders such as depression

or anxiety, which are common among HIV-infected individuals. They expressed concern that an individual who had HIV infection would nevertheless have to meet a specific mental disorder listing without consideration of the factors of HIV infection and its symptoms. Some commenters suggested that we add depression and anxiety as manifestations of HIV infection.

Response: We agree that many individuals with HIV infection display signs and symptoms of mental disorders, such as anxiety and depression. In some cases, this is a reaction to the condition, similar to that of many individuals afflicted with other serious disorders, such as cancer or heart disease, and may be a mental disorder in itself. In some cases, the mental findings may be manifestations of the underlying HIV infection. For example, mental signs associated with HIV encephalopathy are, of course, manifestations of the illness. Some people who have HIV infection may have mental disorders that are unrelated to the HIV infection but nevertheless contribute to their limitations; for example, individuals who abuse drugs may have a mental disorder related to their use of drugs.

However, regardless of whether the mental findings are signs or symptoms of an underlying disorder, mental impairments in and of themselves, or symptoms of mental impairments, can vary in their severity and impact on each individual's functioning. We, therefore, believe that it is appropriate to evaluate these kinds of mental findings either under our mental listings or under final Listings 14.08N and 114.08O, in both of which we are required to consider their impact on the person's functioning. The mental listings contain criteria not only for the evaluation of depression and anxiety disorders (Listings 12.04, 12.06, 112.04 and 112.06) but other disorders that include these findings among their signs and symptoms. Moreover, Listings 12.02 and 112.02, Organic mental disorders, are listings specifically for people who experience psychological or behavioral abnormalities associated with organic brain dysfunction. Therefore, these listings would include mental manifestations caused by HIV.

We also repeat that the test of disability involves much more than a requirement that an impairment meet (or equal in severity) any listing, and that disability may also be established at the last steps of the sequential evaluation processes.

Comment: Many commenters suggested including listing criteria for genital ulcers or genital herpes. Some suggested specific listing criteria, such as chronic genital ulcers; chronic genital ulcers persisting for more than 1 month; chronic genital ulcers that fail to respond to treatment and persist for more than 4 weeks; chronic genital ulcers caused by a sexually transmitted disease that fail to respond to treatment and persist for more than 4 weeks; recurrent herpes simplex; recurrent herpes with lesions that have not been documented to last 4 weeks, but that recur more often than every 8 weeks or that are incompletely suppressed despite continuous maintenance therapy.

Other commenters simply identified the conditions they thought should be included (e.g., genital herpes), without describing any particular level of severity.

Response: As we noted above, we considered both possible interpretations of these comments; i.e., that the commenters thought the mere existence of the condition was sufficient to establish disability or that the commenters thought we could devise severity criteria. To the extent that the commenters were suggesting that we include these conditions without additional criteria describing impairment severity (such that any individual with HIV infection and genital ulcers would have an impairment that meets the listings), we did not adopt the suggestions. Although genital ulcerative disease can be of disabling severity, it is not necessarily disabling. Consequently, the assessment of severity must be based on criteria beyond the mere presence of the disease.

Some of the comments demonstrated that our proposed criteria for Herpes simplex (proposed Listings 14.08A5, 14.08E2, 114.08A5, and 114.08E2) were not clear. (Many commenters recommended criteria that were essentially the same as the criteria we proposed.) Therefore, we reorganized the proposed listings (which became final Listings 14.08D2 and 114.08D2) to make it clearer that genital ulcers caused by Herpes simplex that persist for 1 month or longer meet the criteria of the listing. We did not adopt the suggestion to include Herpes simplex infection that does not last for 1 month, but recurs, because recurrence alone is not a reliable indicator of impairment severity; an individual with recurrent minor lesions of short duration may be completely unimpaired. Recurrent manifestations of HIV infection may be evaluated based on the functional consequences of the disorder in final Listings 14.08N and 114.08O.

In further response to these and other comments, we also developed general criteria in final Listings 14.08F and 114.08F for conditions affecting the skin and mucous membranes, which include genital ulcerative disease. For reasons we have already given in the explanation of the final rules, the criteria are based on the severity of the resulting lesions ("with extensive fungating or ulcerating lesions") and the response to treatment ("not responding to treatment").

We did not adopt the suggestion to include criteria limiting the evaluation to ulcers caused by a sexually transmitted disease, or the suggestion to require that the conditions be both resistant to treatment and of a specific duration. Adopting these suggestions would have resulted in an unnecessarily restrictive listing.

HIV Manifestations Specific to Women

Comment: Many commenters suggested adding criteria for evaluating pelvic inflammatory disease, often called PID. They suggested various medical criteria for describing listing-level pelvic inflammatory disease, including: pelvic inflammatory disease resulting in severe pain; recurrent or refractory pelvic inflammatory disease; pelvic inflammatory disease that is persistent or resistant to treatment; pelvic inflammatory disease of more than 1 month's duration that does not respond to treatment; pelvic inflammatory disease with a specific number of episodes (e.g., three or more episodes); pelvic inflammatory disease with one episode requiring hospitalization; pelvic inflammatory disease with one episode requiring pelvic surgery; pelvic inflammatory disease with one episode resulting in documented chronic pain syndrome; or some combination of the above.

Response: We responded to these comments by developing stand-alone medical criteria that may be used to evaluate pelvic inflammatory disease in final Listings 14.08A5 and 114.08A6. We included pelvic inflammatory disease in the childhood listings because there are many adolescent girls who have the disease. Although we did not fully adopt any one of the suggestions for specific criteria to describe listing-level severity, we derived our criteria from many of the suggestions.

We did not adopt some of the specific suggestions because they did not represent listing-level severity. For example, we did not include a blanket rule for pelvic inflammatory disease requiring surgery because pelvic inflammatory disease (whether in the

general population or in individuals with HIV infection) usually responds to surgical treatment and, therefore, will not always meet the statutory duration requirement. Moreover, a single episode of pelvic inflammatory disease requiring hospitalization is not an accurate predictor of continuing impairment severity because individuals often recover satisfactorily from such an isolated episode.

The criteria in these final rules (i.e., pelvic inflammatory disease requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year) are similar to a number of the commenters' suggestions (e.g., recurrent or refractory pelvic inflammatory disease; pelvic inflammatory disease that is persistent or resistant to treatment; pelvic inflammatory disease of more than a month's duration that does not respond to treatment; pelvic inflammatory disease with a specific number of episodes). The criteria are also based on the same premise as those suggestions—that disability from pelvic inflammatory disease can be measured most accurately by the persistence and severity of the infection. We believe that the final rules are less stringent than some of the commenters' suggestions, especially those that require more-or-less continuous disease. The final rules may be used to evaluate claims filed by women and girls who may recover from bouts of infection, but who suffer from repeated infections, or who may have their infections controlled for a time only to suffer exacerbations.

The criteria in final Listings 14.08A5 and 114.08A6 do not apply only to pelvic inflammatory disease, but to any other multiple or recurrent bacterial infections requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year. Bacterial infections, including pelvic inflammatory disease, that do not meet these criteria but that may be disabling because of pain, chronic illness, or other symptoms and signs may also be evaluated under the functional criteria in final Listings 14.08N and 114.08O.

Comment: Many commenters recommended that we revise the proposed listing-level criteria for invasive cervical cancer, FIGO stage II, in proposed Listing 14.08J2. Some suggested that we use stage IB because cancer at that stage usually requires the same treatment as cancer at stage II (i.e., surgery and radiation therapy). Other commenters suggested stage I (without indicating IA or IB), or made no specific recommendation.

In addition, some commenters recommended that we allow evaluation of cervical cancer not yet at FIGO stage II under the functional test in proposed Listing 14.08M3.

Response: We did not adopt the recommendations to list cervical cancer less than FIGO stage II as a stand-alone listing. Impairment severity in the case of malignant tumors is assessed by considering the site of the lesion and extent of involvement, histogenesis of the tumor, adequacy of and response to treatment, and any post-therapeutic residuals. We chose FIGO stage II as the listing-level criterion for cervical cancer as a manifestation of HIV infection because that is the minimal point at which the cancer has advanced beyond the cervix. In FIGO stage I, the cancer is confined to the cervix—stage IA indicates cancer that can only be seen microscopically, and stage IB indicates a larger amount, deeper in the tissues of the cervix, but still confined to the cervix. In stage II, however, the cancer has spread beyond the cervix into the uterus or upper vagina. Stage I (including IB) cervical lesions are usually amenable to treatment, even in individuals with HIV infection.

The fact that the recommended treatment is the same for stages IB and II may have clinical significance, but it says little about the potential for ongoing functional restrictions.

Our revisions in final Listings 14.08N and 114.08O address the suggestion to evaluate cervical cancer of a severity less than FIGO stage II at the listing level in conjunction with functional restrictions. As we have already explained, final Listing 14.08N allows for a finding that manifestation of HIV infection (including cervical cancer not meeting the criteria in Listing 14.08J) may be found to meet the listing based on the functional consequences of the impairment.

Comment: Many commenters identified other manifestations of HIV infection that they considered disabling to women, and suggested that we include those manifestations in Listing 14.08. They cited many of the same manifestations that commenters suggested as general additions to the adult listings (which we have already discussed above), or as conditions that should not have been tied to the functional criteria in proposed Listings 14.08M, 114.08L, and 114.08M (also discussed above). They also suggested that we add abscess of an internal organ or body cavity, cervical dysplasia, chronic headaches, vulvovaginal candidiasis, human papillomavirus, and vaginal condyloma. (As noted previously, when a comment suggested adding one of these manifestations to the listing but did not include criteria describing impairment severity, we analyzed both possible interpretations of the comment.) One commenter suggested extensive revisions in the tenth, eleventh, and twelfth paragraphs of proposed 14.00D, the proposed paragraphs discussing the evaluation of HIV infection in women. The commenter provided specific language for such revisions.

Response: We have added to the final listings most of the conditions suggested by the commenters by drafting specific criteria describing listing-level severity for a wide range of HIV-related conditions common in women. We could not, however, adopt the suggestions to include these conditions without additional criteria describing impairment severity. None of the conditions suggested are necessarily disabling solely by virtue of being present with HIV infection.

We considered all the criteria the commenters suggested for describing impairment severity, but decided to draft original criteria based on the suggestions and on other information about the severity and consequences of the conditions. In many cases, the criteria we decided to use are similar to the suggested criteria. For example, a comment suggested adding vulvovaginal candidiasis of more than 1 month's duration that does not respond to therapy; we decided to include all skin and mucosal conditions with extensive ulcerating lesions not responding to treatment in final Listings 14.08F and 114.08F. Whenever we decided to use criteria significantly different from that suggested by the commenters, we did so based on what is known about the severity and consequences of the conditions.

Final Listings 14.08F and 114.08F include criteria for vulvovaginal candidiasis and condyloma caused by human papillomavirus. Because these conditions can affect both adults and children, especially adolescent children, we incorporated the criteria into both part A and part B of the listings.

Although abscesses of an internal organ or body cavity are not specifically referred to in the final rules, they may be evaluated under final Listings 14.08A5 and 114.08A6, which apply to multiple or recurrent bacterial infections.

We did not adopt the suggestions to include criteria for cervical dysplasia or headaches. Cervical dysplasia is a clinical finding, a deviation from normal in the cells in the lining of the cervix, which may or may not cause symptoms or progress to a more serious condition. We did not list it as a separate condition because, although clinically meaningful, dysplasia alone

does not necessarily result in functional limitation, and evaluation of such a condition will depend on its impact on the individual on a case-by-case basis. Headaches are symptoms that may be associated with a wide range of medical conditions, and should be evaluated according to the underlying condition and our rules for the evaluation of symptoms, including pain, in §§ 404.1529 and 416.929, which we have recently updated and made more detailed.

In the final rules, we deleted the paragraphs the last commenter asked us to edit because vulvovaginal candidiasis, genital herpes, and pelvic inflammatory disease are now specifically included in the final listings as stand-alone medical conditions. Based on these revisions, the additional language suggested by the commenter was not needed. The guidance in final 14.00D5, Manifestations specific to women, is more general and addresses issues of evaluation instead of specific manifestations.

Comment: A comment suggested that we add a discussion of HIV infection in pregnant women to the preface and that we use different listing criteria for pregnant women. The comment said that immunological alterations associated with pregnancy and the fact that the CD4 count typically decreases during pregnancy raise the possibility that HIV infection could be accelerated. For example, pregnant women may develop opportunistic infections when their CD4 counts fall below 300.

Response: We did not adopt the comment. We agree that medical literature reports that the rate of CD4 cell loss in HIV-infected pregnant women is faster than in HIV-negative pregnant women or HIV-infected men. However, as we state in final 14.00D4a and 114.00D4a, a CD4 count in itself is not an indicator of the severity of the HIV infection or its functional effects, or a reliable predictor of when manifestations will occur. If pregnant women develop manifestations of HIV, we will evaluate them in the same way that we do in other women, examining the particular effects of their conditions on a case-by-case basis.

Comment: Another comment noted that we had included gynecological conditions associated with HIV infection and functional limitations in the proposed listings. The comment said that, since the conditions are also prevalent in HIV-negative women, we should add listings for gynecological conditions associated with conditions other than HIV infection, and resulting in functional limitations.

Response: We did not adopt the comment, which was beyond the scope of these rules. However, in evaluating the claim of a woman with or without a compromised immune system under the listings, we will consider whether the medical findings for any gynecological impairment, in combination with other impairments or standing alone, are listed or are medically equivalent in severity to the findings for the most closely analogous listed impairment.

The Childhood Listings: Other Comments

General

Comment: A number of commenters expressed concern that the proposed childhood HIV listings did not adequately reflect the course of the disease in children, but were merely an extension, with minor changes, of the adult HIV listings. One comment recommended that we limit the childhood HIV listings to those aspects peculiar to children that are not covered by the adult HIV listings.

Response: We partially adopted the comments, even though it is not true that the proposed childhood listings were only an extension of the adult listings. It is simply a fact that many of the manifestations of HIV infection in children are the same as those in adults. Although the course of these manifestations may differ somewhat in a child, in most instances the mere existence of a manifestation is sufficient to establish listing-level severity. For that reason, there was no need to provide criteria distinguishing the childhood manifestations from criteria in the adult rules. Where the differences did matter—for instance, in proposed Listing 114.08F (final Listing 114.08A5) (for two pyogenic bacterial infections in 2 years) and proposed Listing 114.08J (final Listing 114.08H) (for HIV encephalopathy)—we proposed criteria that recognized these differences.

However, we agree with the general suggestion to make the childhood listings better reflect the course and manifestations of the disease in children, and have revised the final listings accordingly. We revised the discussion about the course and manifestations of HIV infection in children in final 114.00D5, deleted most cross-references to the adult rules, and provided more listing criteria that describe the unique presentation of some manifestations in children. We describe the listings changes in other comments and responses, below.

The final childhood listings still contain many of the same criteria as the adult listings because they are appropriate to the evaluation of both adults and children. We included these criteria in both listings, as we do in many other body systems, to ensure the public understands the rules and to increase ease and accuracy of adjudication by decisionmakers. Indeed, we have added several new listings to the childhood listings that are the same as adult listings—such as listings describing manifestations that affect women—because we believe that it is not self-evident that many children (especially adolescents) are unfortunately in the same risk groups for HIV infection as many adults and, therefore, suffer from the same manifestations.

Documentation

Comment: One comment stated that the HIV evaluation criteria for children in the proposed rules were too vague to be properly applied.

Response: We have responded to the comment by clarifying 114.00D3 and 114.00D4 of the final rules, the documentation standards for evaluating children with HIV infection, final 114.00D6, Evaluation of HIV infection in children, and final 114.00D7, Effect of treatment.

Evidence of HIV Infection

Comment: We received many comments about our proposal in the fifth paragraph of proposed 114.00C to use CD4 (T4) lymphocyte counts to establish the existence of HIV infection. Some commenters agreed with the proposal that CD4 counts of 1500/mm^3 or less or 20 percent or less are evidence of HIV infection for children from birth to age 1. A few commenters believed that a CD4 count of 1000/mm^3 or less should by itself be evidence of HIV infection for children 12 to 15 months of age. Other commenters said that CD4 counts of 750/mm^3 or less should be evidence of HIV infection for children 12 to 24 months of age. One comment suggested that we provide language discussing the change in CD4 counts with age.

Some commenters believed that CD4 counts of 750/mm^3 or less should be the standard for children 1 to 15 years of age. One comment said that the CD4 counts used in the childhood listings were not consistent with CDC guidelines.

Response: We partially adopted the comments. As we make clear in 114.00D3, antibody testing for HIV infection is not definitive in young children because the mother's antibodies can persist in a child up to 24 months of age, even if the child is not

infected. Therefore, we need to include criteria that would help identify when infants who test positive for HIV antibodies are actually infected. CD4 counts alone are generally not used to definitively diagnose HIV infection in children, in part because there is still some debate in the medical community about what the norms for CD4 counts in children should be. However, the CD4 counts in these rules are used by the medical community to begin prophylaxis for Pneumocystis carinii pneumonia, and are sufficiently suggestive in an infant who has tested positive for HIV antibodies to presume the existence of HIV infection.

Because of the continuing debate about the norms in children, we cannot adopt the recommendation to use a higher CD4 count for children age 12 months to 15 months of age. However, even though we have not increased the CD4 count threshold in the final rules, we have extended the age range for CD4 counts of 750/mm3 or less to cover children up to 24 months of age to make them consistent with the CDC guidelines for prophylaxis, in response to some of the comments, and based on other information we received. We also added two additional ways of establishing the presence of HIV infection in response to a comment we summarize below.

We did not extend the use of CD4 counts to aid in the diagnosis of HIV infection in children age 2 years or older because antibody testing is definitive in these children.

Comment: One comment suggested that we find infants who have HIV antibodies automatically eligible until such time as their infection status can be definitively established. Another comment suggested that we establish a listing that would allow for a finding of disability for a child between birth and age 15 months who has HIV antibodies and exhibits failure to thrive, diffuse lymphadenopathy, or any form of candidiasis. The commenters stated that the presence of HIV infection in young children can be difficult to confirm through laboratory testing, which can be expensive and may be inconclusive.

Response: We did not adopt these suggestions because the Act requires that disability be established in order for the claimant to receive benefits. As one medical organization that submitted comments noted, only about one in three infants born with HIV antibodies actually has HIV infection.

However, in response to these and other comments, we revised final 114.00D3 to allow HIV infection to be documented based on medical history, clinical and laboratory evidence (other than the laboratory evidence that definitively diagnoses the impairment), and diagnoses. The documentation must be consistent with the prevailing state of medical knowledge and clinical practice and consistent with the other evidence. Thus, a diagnosis of HIV infection could be established under the final rules for a child who has HIV antibodies and exhibits failure to thrive, diffuse lymphadenopathy, or any form of candidiasis. However, we cannot make a blanket statement that this would, or should, always be the case, because diagnoses of HIV infection in such cases rely on clinical judgment and the documented facts of the individual case. For example, oral candidiasis (oral thrush) is a very common condition in babies. If this were the only finding in an infant with HIV serum antibodies, a doctor would have to make a judgment, based on such factors as the severity, frequency, duration, and response to treatment of the infection, and whether there are other accompanying clinical findings, to decide whether the infection is a routine infection of infancy or a sign of HIV infection.

In addition, even if the suggested signs result in a presumed diagnosis of HIV infection, this alone would not speak to the severity of the manifestations or their effects on the child's ability to function. HIV infection alone, without any serious manifestations, will seldom interfere with a child's ability to function.

Once HIV infection is documented, the child, like any person with HIV infection, can be found disabled if his or her manifestations satisfy, or are equivalent in severity to, the criteria in any of the HIV listings or other listings appropriate for the evaluation of the manifestations. If the impairment(s) of a child claimant for SSI does not meet or equal in severity any listing, the effects of the impairment(s) on the child's ability to function will be evaluated at the last step in the sequential evaluation process for children.

In addition, it is important to remember that we consider all the impairments the child has, whether related to HIV or not. Thus, if the child could be found disabled on some other basis, e.g., a child less than 1 year of age who weighed under 1200 grams at birth, consideration of HIV infection would not be necessary.

Comment: One comment suggested that we include abnormal CD4/CD8 ratios and immunoglobulin G (IgG) levels greater than or less than the normal range for age as laboratory evidence of HIV infection in children.

Response: We adopted the comment in final 114.00D3b (iii) and (iv). These laboratory findings are acceptable documentation of the existence of HIV infection in children up to age 24 months who have serum antibodies for the HIV.

Comment: One comment suggested language to revise the fifth paragraph of proposed 114.00C to expand the discussion about the transmission of HIV antibodies and HIV infection from mother to child and the significance of CD4 counts. The comment suggested adding information about the low prenatal and natal HIV transmission rate to infants, and the duration of HIV antibody persistence, and put the list of laboratory findings in a separate paragraph.

Response: We modified and adopted the suggested language in final 114.00D3 a and b.

Comment: Another comment noted that, although proposed 114.00C stated that the mean age of diagnosis of children infected before or shortly after birth is 17 months, various mean ages of diagnosis of HIV infection have been determined and diagnosis is often made earlier.

Response: We have adopted this comment by removing the language concerning the mean age of diagnosis of children infected before or shortly after birth. Final 114.00D3b permits HIV infection to be documented in children from birth to the attainment of 24 months of age based on any of four specific laboratory findings, or based on documentation consistent with the prevailing state of medical knowledge and clinical practice.

Comment: Several commenters said we should delete the language in the ninth paragraph of proposed 114.00C describing how pediatric populations may contract HIV because it was inappropriate and irrelevant to the purpose of disability determination.

Response: We adopted the comment.

Symptoms and Response to Treatment

Comment: One comment said that the criteria incorrectly assumed that children will adequately express and document pain, fatigue, complications and/or reactions to therapy.

Response: We recognize that some children may have a limited ability to report history, symptoms, and other information, but we do not believe that this will have an adverse effect on their claims. Most of the listings in final 114.08 do not include symptoms among their criteria; rather, the criteria consist of clinical signs and laboratory findings that will be documented in the child's medical records. Furthermore, our experience in processing childhood disability claims has shown that a

child's symptoms will generally be observed by a parent or other caregiver who will provide this information to the physician and to us.

Although some children may not be able to verbally describe their symptoms, these symptoms may be expressed in other ways, such as otherwise unexplained changes in demeanor, behavior, eating habits, and sleeping habits. These changes would be readily discernible to the child's parents or other caregivers, a physician or other professionals experienced in evaluating and treating children, as well as to other people who see the children, such as relatives, teachers, social workers, and ministers. Older children should be more able to express their symptoms and any adverse effects of treatment, if this information is needed for adjudication.

Adolescents

Comment: Many commenters requested that we eliminate the proposed criteria that distinguished between children under age 13 and over age 13. Many of the commenters questioned our statements in the ninth paragraph of proposed 114.00C that the course and spectrum of disease in children age 13 and older is generally similar to that of adults, and that older children with HIV encephalopathy and HIV wasting syndrome should be evaluated under the appropriate adult listings. One comment asserted that scientific and medical literature point to distinctive differences between the course and spectrum of HIV infection in adolescents and adults, and referred us to the "Journal of Pediatrics," Volume 119, July 1991, Number 1, Part 2, titled "Guidelines for the Care of Children and Adolescents With HIV Infection. Report of the New York State Department of Health AIDS Institute Criteria Committee for the Care of HIV-Infected Children."

Response: We partially adopted the comments. Our statement in the ninth paragraph of proposed 114.00C that the course and spectrum of the disease in children age 13 and older is the same as in adults was correct and was confirmed by various pediatric authorities, including some who specialize in the study and treatment of adolescents. We disagree with the comment suggesting that the scientific and medical literature supports a contrary view. Indeed, the article cited in the comment does not say that there are significant differences between adolescents and adults in the manifestations of HIV infection; it says that there are differences in epidemiology—i.e., the modes of disease transmission. Our disability determination, however, is based on the effects of the disease on a child's ability to function in an age-appropriate manner, not on how the child acquired HIV disease.

Nevertheless, in response to the comments we deleted the statement about the course and spectrum of the disease in adolescents, and revised the statement (now in final 114.00D5) about the manifestations and course of disease in younger children. The proposed statement about the disease in adolescents did not provide guidance that was especially relevant to the determination of disability and, therefore, was superfluous.

Comment: A number of commenters thought that it was more difficult for some children with HIV infection to qualify for disability than it was for children with other impairments. The commenters gave as an example a child over age 13 with HIV encephalopathy. The ninth paragraph of 114.00C of the proposed rules had indicated that such a child should be evaluated under proposed adult Listing 14.08G (which, in turn, cross-referred to criteria in the eighth paragraph of 14.00D), and would have required the child to show progressive motor dysfunction and the absence of a concurrent illness. The commenters suggested that this proposed listing was more severe than the children's neurologic Listing 111.06, which the commenters thought requires only interference with age-appropriate major daily activities.

Response: We do not agree that any of the proposed listings made it more difficult for children with HIV infection to qualify for disability than children with other impairments, for reasons we have already given in an earlier comment and response.

The proposed criteria for HIV encephalopathy for children were not more stringent than Listing 111.06. The criteria in the eighth paragraph of proposed 14.00D, which would have been applied to children, required only that there be HIV encephalopathy "characterized by" cognitive or motor dysfunction that limited function and progressed, and that there not be a concurrent illness that could otherwise explain the neurological findings. Thus, the criteria only defined the syndrome of HIV encephalopathy; that is, how one can tell that a person has HIV encephalopathy without invasive testing. Childhood Listing 111.06, on the other hand, requires more than mere interference with age-appropriate activities; it requires persistent disorganization or deficit of motor function involving two extremities that, despite prescribed therapy, interferes with age-appropriate major daily activities and results in disruption of fine and gross movements or gait and station.

However, as we have already said, we believe that the proposed criteria for evaluating HIV encephalopathy in children could be simplified because they appeared only in proposed 114.00C, not in the listing, and required a cross-reference to an adult listing that itself cross-referred to 14.00D of the adult rules. Therefore, we revised final Listing 114.08H (which replaces proposed Listing 114.08J) to include HIV encephalopathy and criteria specifically for children. We also provided guidance in final 114.00D5 specifically for the evaluation of neurological abnormalities, such as HIV encephalopathy, in children. We also deleted the requirement for ruling out other causes, as we did in the corresponding adult rule.

Comment: Some comments questioned our proposals in Listings 114.08F and 114.08G to limit the criteria for multiple bacterial infections and lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia to children under age 13. Similarly, some comments questioned the proposal to pair different manifestations with functional requirements, for the two age groups in proposed Listings 114.08L and 114.08M.

Response: We adopted most of the comments. We eliminated the age reference in final Listing 114.08L, Lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia, so that it now applies to children of all ages. We had proposed the distinction only because the manifestation is quite rare in older children, as it is in adults. However, it is possible that an older child could have the disorder, especially as more and more children who contracted HIV perinatally or early in life are surviving into adolescence. For reasons we have already given, however, we have also revised final Listing 114.08L to better describe listing-level severity.

The functional listing, final Listing 114.08O, which replaces proposed Listings 114.08L and 114.08M, no longer lists specific medical manifestations. Therefore, there is no longer a need to distinguish between adolescents and younger children.

We have retained the age limit in final Listing 114.08A5, Multiple or recurrent pyogenic bacterial infections, because these types of infections are more serious and more indicative of a rapid decline in younger children, and age 13 is medically an appropriate dividing line. Although we could have confined

the rule to younger children, we decided to retain the rule because age 13 is fair and consistent with prevailing medical practice, and we want these listings to be as inclusive as possible. Furthermore, unlike the proposed rules, the final rules include a new Listing 114.08A6 under which all children, including adolescents, may establish that they have impairments of listing-level severity as the result of multiple bacterial infections of any type.

Comment: Another comment recommended that we address the special needs of adolescents with HIV infection, including feelings and fears regarding HIV testing, effective ways of counseling adolescents, coping strategies of adolescents with HIV infection, and the role of social support in the lives of adolescents with HIV infection. The comment also recommended that we establish a group of experts within SSA to focus on the specific needs of adolescents with HIV infection.

Response: We share these concerns about the impact of HIV infection on adolescents. However, the recommendations involve areas of social services policy that are beyond our authority under the Act and, thus, cannot be addressed within the context of these rules.

Final 114.08H Neurological Manifestations

Comment: One comment recommended that we add "the sudden acquisition of new learning disabilities" as a fourth criterion in proposed Listing 114.08J (final Listing 114.08H).

Response: We adopted the comment. We added language to the second paragraph of final 114.00D5 and a parenthetical statement in final Listing 114.08H1 (which replaces proposed Listing 114.08J1) to state clearly that the loss of previously acquired, or marked delay in achieving, developmental milestones or intellectual ability, includes "the sudden acquisition of a new learning disability." This addition is only a clarification of our original intent in the proposed rules.

Final 114.08I Growth Disturbance

Comment: Many commenters suggested we clarify our criteria for assessing failure to thrive. Some commenters thought we were using the height criteria specified in Listing 100.02 to assess failure to thrive under proposed Listing 114.08K. The commenters indicated that, because the term "failure to thrive" generally refers to infants and children who fail to gain weight at an appropriate rate or who lose weight, the listing should contain criteria based on weight.

Other commenters stated that the 10 percent weight loss required by proposed Listings 114.08L and 114.08M, which was the same standard used in the adult HIV listings, was too strict. They pointed out that a standard of weight loss can make sense for adults because adults are fully grown and are expected to maintain a static weight. However, because children are growing, it is possible for a child to be gaining weight but falling behind what is normal, so that the resulting impairment would be as severe as a serious weight loss. The majority of these commenters suggested using a 5 percent weight loss as a standard for children. Another suggestion was to base our criteria on a failure to follow age-appropriate growth curves on standard growth charts.

Response: We adopted several of the comments. We revised final Listing 114.08I, which is now headed "Growth disturbance" to include weight criteria for failure to thrive in addition to the height criteria. The first two criteria of final Listing 114.08I describe children who have either lost weight or who have failed to gain weight at an appropriate rate, so that there is persistence of a fall of 15 percentiles on a standard growth chart or persistence of weight below the third percentile on a standard growth chart. We have determined that this approach provides a more accurate method of assessment than basing our criteria solely on a percentage of weight loss because, as the commenters stated, children can, in fact, be gaining weight and still be failing to thrive.

We have, however, also retained the criterion of a 10 percent weight loss in final Listing 114.08I3 (formerly in proposed Listings 114.08L and 114.08M) because in some cases 10 percent weight loss will still be less than 15 percentiles on a standard growth chart or result in a weight above the third percentile. We believe that a 5 percent weight loss would be too small to be a reliable standard in the listings, and that children with this amount of weight loss will have to be evaluated on an individualized basis under the rules for equivalence and the last step of the sequential evaluation process.

We have also retained the rules providing for loss of height or length, as described in the growth impairment listings in 100.00. Both the 10 percent weight loss provision and the cross-reference to the growth impairment listings merely provide alternative criteria by which children may be found disabled under the listings.

Comment: A number of commenters were also concerned about assessing HIV-related growth impairments in children by reference to the criteria of Listing 100.02. The commenters said that Listing 100.02 defines when a growth impairment is disabling in itself and not because HIV infection has interfered with growth. The commenters also questioned whether the longitudinal approach required by Listing 100.02 is appropriate for children with a progressive disease such as HIV infection.

Response: Listing 100.02 is appropriate to use because it is a listing for evaluating growth impairment caused by a known medically determinable impairment, such as HIV infection. It is, thus, a very appropriate listing for evaluating growth impairment caused by HIV infection. (However, we revised the reference to 100.00ff for consistency with our other revisions.) In any event, by expanding final Listing 114.08I, we have made the reference to the growth impairment listing only one alternative among four by which a child's impairment may meet the listing, not the sole criterion as in the NPRM.

We believe the longitudinal approach required by the growth impairment listings is reasonable. Multiple measurements are needed to properly assess the decline in the child's growth and its persistence.

Final 114.08O1: The Functional Criteria for Infants

Comment: One comment objected to the criteria in Listing 112.12, the description of functional deficit we used to describe listing-level severity for infants from birth to age 1 in proposed Listing 114.08L3. The comment stated that our standard of one-half chronological age for these children appeared to be more restrictive than the standard for older children and adults, especially considering how quickly infants change over time. Also, the comment suggested that impairment at the level specified need only be documented at one assessment.

Response: The functional standard for children from birth to the attainment of age 1 (and for many children age 1 to the attainment of age 3), now in final Listing 114.08O, is not more restrictive than the standard used for older children and adults. In the Mental Disorders listings, older children and adults are found disabled at the listing level if their impairments result in marked limitations in two areas of functioning. In Listings 112.12 A and B (and in Listings 112.02B1 for children age 1 to 3), however, a young child has an impairment that meets the functional requirements of the listings if he or she has either one "extreme" limitation or

two "marked" limitations. An extreme limitation may result when the function or developmental milestone is limited to no more than one-half the child's chronological age, while marked limitations result with less severe limitations—more than one-half but no more than two-thirds of the child's chronological age.

For this reason, we provide two ways for children from birth to the attainment of age 3 to establish listing-level severity. Under the functional criteria in Listings 112.02B1a, b, and c, and in Listings 112.12A and B, children can establish that their impairments are of listing-level severity by showing functioning or delays at no more than one-half of their chronological age. Alternatively, under Listings 112.02B1d and 112.12E, they can establish listing-level severity in the same way that older children and adults do: by showing marked impairment—i.e., functioning at more than one-half but less than two-thirds of chronological age—in two functional areas.

We recognize the problems involved in assessing infants, who do change rapidly over time. Because of this, we cannot state that determinations of disability can always be based on a single evaluation. The amount of evidence needed for each claim has to be determined based on the facts of that specific claim, which include the nature and progression of the impairment, the interventions and treatments available, the response to those interventions and treatments, and—perhaps most importantly—the individual infant's own response to the illness.

Other Comments

Error in Proposed Listing 14.08D

Comment: Several commenters pointed out that the 2-month timeframe set out in the ninth paragraph of proposed 14.00D for chronic diarrhea or documented fever caused by HIV wasting syndrome was longer than the 1 month required by the CDC's surveillance definition.

Response: The criterion in the NPRM was an editorial error. In fact, we have been using a 1-month standard in our operating instructions, consistent with the CDC surveillance definition of HIV wasting syndrome. We have corrected the final rule, which is in final Listing 14.08I.

Administrative Procedure Act

Comment: A few commenters expressed a concern that we had released guidelines on the evaluation of HIV infection in the form of a Social Security Ruling (SSR), in effect implementing the proposed rules in the NPRM in advance of public comments. Some commenters saw this as a breach of faith or a violation of the Administrative Procedure Act (APA).

Response: We have issued SSRs (SSRs 84–19 and 86–20) and manualized instructions concerning HIV infection on various occasions since 1983, as medical and scientific knowledge about this disease became available, to provide guidance to our decisionmakers concerning how claims involving HIV infection could be evaluated within the context of the law and regulations. On December 17, 1991, we published the latest of these instructions, an interpretative ruling, SSR 91–8p, in the **Federal Register** (56 FR 65498), to announce and to state our criteria for evaluating HIV infection. We have been applying this interpretive ruling in our adjudication of claims filed by people with HIV infection. Since January 11, 1990, we have published SSRs in the **Federal Register** pursuant to the provisions of § 422.406(b) of part 422, of title 20 of the Code of Federal Regulations. Statements of policy in SSRs continue to be binding on all components of SSA, just as they have been since before the regulatory change in 1990 that provided for their publication in the **Federal Register**.

The purpose of these criteria has been to permit our decisionmakers to make findings of disability when a particular AIDS- or HIV-related condition could "meet" or "equal" a listing under the existing regulatory framework. If we had not published them but had waited for these final rules, we would have followed our prior instructions which, as we have stated, were not as inclusive as the criteria we published in SSR 91–8p. The effect would have been only to delay needlessly claims that we have now been able to allow.

Advisory Council

Comment: A number of commenters recommended that we convene a group of experts, an advisory council, or other knowledgeable specialists to evaluate and revise the proposed listings on HIV infection, and to regularly review the listings to keep the criteria for HIV-related diseases current. Some commenters also thought that the proposed rules for evaluating HIV infection in children did not reflect the expertise of childhood medical specialists. They pointed out that no childhood specialty groups, such as the American Academy of Pediatrics (AAP), or public interest advocacy groups were among the list of medical specialty groups listed in the NPRM as providing information in developing the HIV criteria in proposed Part B. They questioned whether any of the experts listed were pediatricians and whether they were independent of SSA. A few commenters also said the implementation of the proposed rules should be delayed until we consult with childhood HIV experts.

Response: We did not adopt the recommendation to establish an advisory council to assist us in preparing these rules. We solicited information from individual medical experts, including pediatricians, in developing the proposed rules. Establishing a separate group of experts following the publication of the NPRM would likely have duplicated many of the steps we had already undertaken and, most importantly, such duplication would have caused unnecessary delay in the publication of these final rules, to the disadvantage of claimants with HIV infection. Moreover, the public comments in response to the NPRM came from a broad spectrum of the medical, legal, and advocacy communities, and, hence, included some of the kind of input recommended by the commenters.

Nevertheless, and partly in response to the comments, we have sought additional information from a wide range of individual medical specialists. Other experts assisted us on an individual basis as we finalized these rules and responded to the comments.

With regard to the proposed rules for evaluating HIV infection in children, although we did not obtain information from the AAP during the development of the proposed rules, we did obtain information from pediatricians at Johns Hopkins Hospital, the Centers for Disease Control, and other Federal agencies, all of which were independent of SSA. Furthermore, during the process of developing the final rules, we obtained information from additional pediatricians and other individuals with knowledge and treatment experience in pediatric HIV infection in all childhood populations, including adolescents. Among these individuals were some recommended by members of the AAP and a physician to whom we were specifically referred by the AAP. Finally, the AAP, as well as other pediatric specialty groups and other children's advocacy groups, have submitted comments on the NPRM expressing their interest or concern about its content and publication. By submitting these comments, these groups have participated in the formulation of the final rules.

Timely Updates

Comment: A number of commenters responded to our request for suggestions on alternatives to our regulatory process consistent with the APA and that would enable us to issue timely updates to the listings for HIV infection (56 FR at 65704). One comment suggested that we develop a decisionmaking protocol, which would be subject to the normal regulatory process, that would establish a procedure for evaluating when changes would be appropriate in the listings. Other comments proposed that we create an ongoing advisory panel composed of a range of experts committed to assisting us in updating and refining these procedures in a timely fashion as medical knowledge on HIV improves.

Response: We appreciate these suggestions, and will give them further study. We will study whether any of the suggestions we received can be used given the constraints of the Act and our regulations. We have always attempted to update the medical listings to reflect advancements in medical technology, disability evaluation and treatment, and changes in knowledge and new disease processes. We monitor the listings on an ongoing basis to ensure that they continue to meet program purposes and, when changes are found to be warranted, the listings for that body system are updated through the normal regulatory process.

We recognize that the HIV listings may need to be changed as we learn more about the course of HIV infection in different populations, and as new tests and treatments are developed. We will update the listings as it becomes necessary, and will issue new instructions to our adjudicators as this becomes necessary.

Excessive Paperwork

Comment: A number of commenters were concerned that the proposed rules were complicated and would require too much paperwork on the part of health care providers and claimants to document a claimant's eligibility. They were also concerned that the proposed rules would not produce timely disability determinations, which would be harmful to individuals affected by HIV infection.

Response: We agree that paperwork and the effort required to establish a disabling impairment should be kept to a minimum. We have made changes in the final listings that will facilitate the documentation and adjudication of HIV claims. These changes include revising the criteria for documenting the existence of HIV infection and its manifestations to permit documentation of HIV infection or its manifestations in the absence of a definitive diagnosis and to permit a finding of "meets" for most of the impairments formerly tied to functional criteria in proposed Listing 14.08M when the medical evidence indicates listing-level severity. In addition, we give these claims priority handling.

Training

Comment: Several commenters expressed the need for extensive training for health care officials, physicians, advocates, Social Security personnel, and the general public.

Response: We agree, and have already begun a public awareness campaign and training initiative with respect to HIV including the design, printing, and distribution of brochures, television and radio public service announcements (in both English and Spanish), and video news releases. We are also working with the medical community, service providers, and advocacy groups to ensure that the important message about the potential for Social Security Disability Insurance (SSDI) and SSI benefits reaches those with HIV infection. We have also provided training to our adjudicators and will continue to provide training as necessary.

Trust Fund

Comment: A few commenters expressed concern about the cost of adding manifestations of HIV infection to the Listing of Impairments on the Social Security and health care financing systems.

Response: These final rules establish a listing for HIV infection to replace the adjudicative criteria we have been using to evaluate manifestations of this disease. These final rules represent only the latest refinement of the criteria we have been using since we began receiving these cases shortly after AIDS was first identified. Consequently, we do not expect their publication to have a significant additional effect on the Federal Disability Insurance Trust Fund or the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. It should also be noted that SSI benefits are not paid from the Social Security trust funds, but from the general revenues.

Waiting Period for Cash and Medicare Benefits

Comment: A comment suggested that we waive the 24-month waiting period to qualify for Medicare for individuals with HIV infection, which, the comment indicated, we do for other conditions, such as end-stage renal disease. The comment also noted that the 5-month waiting period requirement for SSDI benefits is inappropriate in HIV-infection cases, in view of the short life expectancy that follows a diagnosis of AIDS.

Response: We certainly empathize with the need for medical care for people who are HIV-infected. The comments are, however, outside the scope of these regulations. More importantly, the waiting periods for Medicare (including the exception for end-stage renal disease) and for SSDI benefits are specified in the Act, and cannot be "waived" without a legislative change.

Critical Payments

Comment: One comment recommended that the regulations require Social Security disability adjudicators to notify claimants of the availability of immediate critical payments at the time they are found eligible for disability benefits.

Response: We did not adopt this comment because it is outside the scope of these regulations and has been dealt with in our operating instructions. One of our goals is to pay all benefits due on time, and in the vast majority of cases we meet this goal through routine processing. However, our operating instructions provide for expedited payment by various means if a claimant has a financial emergency. These methods include the one-time emergency advance payment (EAP) procedure, which can be made in SSI cases in accordance with § 416.520 of our regulations when the individual is presumptively eligible for SSI payments and has a financial emergency. Our Field Offices and processing centers also have the capability to make expedited payments in other critical Social Security and SSI case situations.

Determinations at Steps 4 and 5; Younger Individuals

Comment: A number of commenters supported the philosophy of awarding as many claimants as possible at the listing level. They pointed out that most adult claimants with HIV infection are "younger" individuals (i.e., people under 50 years old) under our rules in §§ 404.1563(b) and 416.963(b). The commenters said that, if these individuals are not found to have an impairment(s) that meets a listing, they would probably be denied at the last step of the sequential evaluation processes. One comment said that we almost never do an equivalence analysis. Other comments said that it was insufficient to rely on the rest of the

sequential evaluation process to adjust for the "inadequacies" of the medical standard.

Response: As we have explained, the listings do not represent the standard of disability in the Act, but a higher level of disability, because they are intended only to be a method by which we can quickly pay claims that clearly would be allowed at later steps in the sequential evaluation processes. Indeed, the Act does not require us to have a set of listings at all; the listings are simply a means by which we can process some claims more timely and efficiently.

Therefore, the question is not about any "inadequacies" in the listings, but about whether we will find disabled all individuals who have disabling impairments. We are committed to ensuring that all individuals who are disabled because of HIV infection receive timely and correct determinations under our rules, whether at the listing-level or beyond. This means that we will provide assessments of equivalence and of residual functional capacity (or of a child's functioning) to people who do not have impairments that meet the requirements of any of these listings, and allow those individuals who are disabled within the meaning of the Act.

But the fact that the great majority of people disabled with HIV infection are found to have listing-level impairments also attests to two things: that HIV infection is a terrible disease and that we have made our listing criteria broad enough to include most people who are disabled by HIV infection. We believe that some of the changes in the final rules—the listings for manifestations that affect women and girls, the new stand-alone medical criteria and other new medical criteria we have added, and the improvements to the functional criteria—will include even more disabled people at the listing level.

Beyond that, we can only say that we are as concerned about people with HIV infection as the commenters are. It is never acceptable to deny an individual who is disabled, even more so when the individual has an illness like HIV infection. Nevertheless, we are bound to follow the statute, there are many individuals who have HIV infection and are not yet disabled under the statute, and we have a responsibility to ensure that only individuals who are disabled receive benefits.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only States and individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 29, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: April 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, part 404, subpart P, of Chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1 (Listing of Impairments) to subpart P is amended by adding a new sentence at the end of the fifth paragraph of introductory text to read as follows: "The Immune System listings in part A (14.00) and part B (114.00) and the Multiple Body Systems listings in part B (110.00) will no longer be effective on July 2, 1998, unless extended by the Secretary or revised and promulgated again."

3. The table of contents for part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the entry for 9.00, removing and reserving the entry for 10.00, and adding an entry for 14.00 to read as follows:

Part A

* * * * *

Sec.

* * * * *

9.00 Endocrine System and Obesity
10.00 [Reserved]
11.00 * * *
12.00 * * *
13.00 * * *
14.00 Immune System

4. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by changing the references to "10.04 and 10.05" in the second sentence of 8.00B to "14.02 and 14.04".

5. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by revising the heading for 9.00, Endocrine System, and adding two paragraphs of introductory text, and revising the heading of 9.01, Category of Impairments, Endocrine, to read as follows:

9.00 Endocrine System and Obesity

* * * * *

Long-term massive obesity will usually be associated with disorders of the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the occurrence of these disorders is the major cause of disability at the listing level. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

The weight-bearing criterion in 9.09A refers to the lumbosacral spine. The cervical and thoracic spines are not considered weight-bearing.

9.01 Category of Impairments, Endocrine System and Obesity

* * * * *

6. Part A of Appendix 1 (Listing of Impairments) to Subpart P is amended by redesignating listing 10.10 (including Tables I through III—C), Obesity, as listing 9.09, Obesity, and revising the introductory paragraph, paragraph A, and Tables I and II to read as follows:

9.09 Obesity. Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level), and one of the following:

A. History of pain and limitation of motion in any weight-bearing joint or the lumbosacral spine (on physical examination) associated with findings on medically acceptable imaging techniques of arthritis in the affected joint or lumbosacral spine; or

* * * * *

TABLE I.—MEN
[Metric]

Height without shoes (centimeters)	Weight (kilograms)
152	112
155	115
157	117
160	120
163	123
165	125
168	129
170	134
173	137
175	141
178	145
180	149
183	153
185	157
188	162
190	165
193	170

TABLE I.—MEN

Height without shoes (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	276
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

TABLE II.—WOMEN
[Metric]

Height without shoes (centimeters)	Weight (kilograms)
142	95
145	96
147	99
150	102
152	105
155	107
157	110
160	114
163	117
165	121
168	125
170	128
173	132
175	135
178	139
180	143
183	146

TABLE II.—WOMEN

Height without shoes (inches)	Weight (pounds)
56	208
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274
67	282
68	290
69	298
70	306
71	314
72	322

* * * * *

7. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by removing and reserving the entry for listing 10.00, including the tables.

8. Part A of appendix 1 (Listing of Impairments) to subpart P is amended by adding listing 14.00, Immune System, to read as follows:

14.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. They generally evolve and persist for months or years, may result in loss of functional abilities, and may require long-term, repeated evaluation and management.

The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, medically acceptable imaging techniques and, in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the existing medical evidence will contain this information.

A longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed treatment during this period with the expectation that the disease will remain active for 12 months is necessary for assessment of severity and duration of impairment.

To permit appropriate application of a listing, the specific diagnostic features that should be documented in the clinical record for each of the disorders are summarized for systemic lupus erythematosus (SLE), systemic vasculitis, systemic sclerosis and scleroderma, polymyositis or dermatomyositis, and undifferentiated connective tissue disorders.

In addition to the limitations caused by the connective tissue disorder *per se*, the chronic adverse effects of treatment (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

These disorders may preclude performance of any gainful activity by reason of severe loss of function in a single organ or body system, or lesser degrees of functional loss in two or more organs/body systems associated with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

1. Systemic lupus erythematosus (14.02)—This disease is characterized clinically by constitutional symptoms and signs (e.g., fever, fatigability, malaise, weight loss), multisystem involvement and, frequently, anemia, leukopenia, or thrombocytopenia. Immunologically, an array of circulating serum auto-antibodies can occur, but are highly variable in pattern. Generally the medical evidence will show that patients with this disease will fulfill The 1982 Revised Criteria for the Classification of Systemic Lupus Erythematosus of the American College of Rheumatology. (Tan, E.M., et al., Arthritis Rheum. 25: 11271–1277, 1982).

2. Systemic vasculitis (14.03)—This disease occurs acutely in association with adverse drug reactions, certain chronic infections and, occasionally, malignancies. More often it is idiopathic and chronic. There are several clinical patterns, including classical polyarteritis nodosa, aortic arch arteritis, giant cell arteritis, Wegener's granulomatosis, and vasculitis associated with other connective tissue disorders (e.g., rheumatoid arthritis, SLE, Sjögren's syndrome, cryoglobulinemia). Cutaneous vasculitis may or may not be associated with systemic involvement and the patterns of vascular and ischemic involvement are highly variable. The diagnosis is confirmed by angiography or tissue biopsy when the disease is suspected clinically. Most patients who are stated to have this disease will have the results of the confirmatory angiogram or biopsy in their medical records.

3. Systemic sclerosis and scleroderma (14.04)—These disorders constitute a spectrum of disease in which thickening of the skin is the clinical hallmark. Raynaud's phenomena, often severe and progressive, are especially frequent and may be the peripheral manifestation of a generalized vasospastic abnormality in the heart, lungs, and kidneys. The CREST syndrome (calcinosis, Raynaud's phenomena, esophageal dysmotility, sclerodactyly, telangiectasia) is a variant that may slowly progress to the generalized process, systemic sclerosis, over years. In addition to skin and blood vessels, the major organ/body system involvement includes the gastrointestinal

tract, lungs, heart, kidneys, and muscle. Although arthritis can occur, joint dysfunction results primarily from soft tissue/cutaneous thickening, fibrosis, and contractures.

4. Polymyositis or dermatomyositis (14.05)—This disorder is primarily an inflammatory process in striated muscle, which can occur alone or in association with other connective tissue disorders or malignancy. Weakness and, less frequently, pain and tenderness of the proximal limb-girdle musculature are the cardinal manifestations. Involvement of the cervical muscles, the cricopharyngeals, the intercostals, and diaphragm may occur in those with listing-level disease. Weakness of the pelvic girdle, as contemplated in Listing 14.05A, may result in significant difficulty climbing stairs or rising from a chair without use of the arms. Proximal limb weakness in the upper extremities may result in inability to lift objects, and interference with dressing and combing hair. Weakness of anterior neck flexors may impair the ability to lift the head from the pillow in bed. The diagnosis is supported by elevated serum muscle enzymes (creatine phosphokinase (CPK), aminotransferases, aldolase), characteristic abnormalities on electromyography, and myositis on muscle biopsy.

5. Undifferentiated connective tissue disorder (14.06)—This listing includes syndromes with clinical and immunologic features of several connective tissue disorders, but that do not satisfy the criteria for any of the disorders described; for instance, the individual may have clinical features of systemic lupus erythematosus and systemic vasculitis and the serologic findings of rheumatoid arthritis. It also includes overlap syndromes with clinical features of more than one established connective tissue disorder. For example, the individual may have features of both rheumatoid arthritis and scleroderma. The correct designation of this disorder is important for assessment of prognosis.

C. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed and evaluated under the appropriate listing of the affected body system.

D. Human immunodeficiency virus (HIV) infection.

1. HIV infection is caused by a specific retrovirus and may be characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as described in 14.08. Any individual with HIV infection, including one with a diagnosis of acquired immunodeficiency syndrome (AIDS), may be found disabled under this listing if his or her impairment meets any of the criteria in 14.08 or is of equivalent severity to any impairment in 14.08.

2. Definitions. In 14.08, the terms "resistant to treatment," "recurrent," and "disseminated" have the same general meaning as used by the medical community. The precise meaning of any of these terms will depend upon the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and the other circumstances of the case.

"Resistant to treatment" means that a condition did not respond adequately to an appropriate course of treatment. Whether a response is adequate, or a course of treatment appropriate, will depend on the facts of the particular case.

"Recurrent" means that a condition that responded adequately to an appropriate course of treatment has returned after a period of remission or regression. The extent of response (or remission) and the time periods involved will depend on the facts of the particular case.

"Disseminated" means that a condition is spread widely over a considerable area or body system(s). The type and extent of the spread will depend on the specific disease.

As used in 14.08I, "significant involuntary weight loss" does not correspond to a specific minimum amount or percentage of weight loss. Although, for purposes of this listing, an involuntary weight loss of at least 10 percent of baseline is always considered significant, loss of less than 10 percent may or may not be significant, depending on the individual's baseline weight and body habitus. (For example, a 7-pound weight loss in a 100-pound female who is 63 inches tall might be considered significant; but a 14-pound weight loss in a 200-pound female who is the same height might not be significant.)

3. Documentation of HIV infection. The medical evidence must include documentation of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of HIV infection by definitive diagnosis. A definitive diagnosis of HIV infection is documented by one or more of the following laboratory tests:

i. A serum specimen that contains HIV antibodies. HIV antibodies are usually detected by a screening test. The most commonly used screening test is the ELISA. Although this test is highly sensitive, it may yield false positive results. Therefore, positive results from an ELISA must be confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay).

ii. A specimen that contains HIV antigen (e.g., serum specimen, lymphocyte culture, or cerebrospinal fluid (CSF) specimen).

iii. Other test(s) that are highly specific for detection of HIV (e.g., polymerase chain reaction (PCR)), or that are acceptable methods of detection consistent with the prevailing state of medical knowledge.

When laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing.

Individuals who have HIV infection or other disorders of the immune system may undergo tests to determine T-helper lymphocyte (CD4) counts. The extent of immune depression correlates with the level or rate of decline of the CD4 count. In general, when the CD4 count is 200/mm^3 or less (14 percent or less), the susceptibility to opportunistic disease is considerably increased. However, a reduced CD4 count alone does not establish a definitive diagnosis of HIV infection, or document the severity or functional effects of HIV infection.

b. Other acceptable documentation of HIV infection.

HIV infection may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, HIV infection may be documented by the medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. For example, a diagnosis of HIV infection will be accepted without definitive laboratory evidence if the individual has an opportunistic disease (e.g., toxoplasmosis of the brain, pneumocystis carinii pneumonia (PCP)) predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease (e.g., long-term steroid treatment, lymphoma). In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

4. Documentation of the manifestations of HIV infection. The medical evidence must also include documentation of the manifestations of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of the manifestations of HIV infection by definitive diagnosis.

The definitive method of diagnosing opportunistic diseases or conditions that are manifestations of HIV infection is by culture, serological test, or microscopic examination of biopsied tissue or other material (e.g., bronchial washings). Therefore, every reasonable effort must be made to obtain specific laboratory evidence of an opportunistic disease or other condition whenever this information is available. If a histological or other test has been performed, the evidence should include a copy of the appropriate report. If the report is not obtainable, the summary of hospitalization or a report from the treating source should include details of the findings and results of the diagnostic studies (including radiographic studies) or microscopic examination of the appropriate tissues or body fluids.

Although a reduced CD4 lymphocyte count may show that there is an increased susceptibility to opportunistic infections and diseases (see 14.00D3a, above), that alone does not establish the presence, severity, or functional effects of a manifestation of HIV infection.

b. Other acceptable documentation of the manifestations of HIV infection.

Manifestations of HIV infection may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

Documentation of cytomegalovirus (CMV) disease (14.08D) presents special problems because diagnosis requires identification of viral inclusion bodies or a positive culture from the affected organ, and the absence of any other infectious agent. A positive serology test identifies infection with the virus, but does not confirm a disease process. With the exception of chorioretinitis (which may be diagnosed by an ophthalmologist), documentation of CMV disease requires confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

5. Manifestations specific to women. Most women with severe immunosuppression secondary to HIV infection exhibit the typical opportunistic infections and other conditions, such as pneumocystis carinii pneumonia (PCP), candida esophagitis, wasting syndrome, cryptococcosis, and toxoplasmosis. However, HIV infection may have different manifestations in women than in men. Adjudicators must carefully scrutinize the medical evidence and be alert to the variety of medical conditions specific to or common in women with HIV infection that may affect their ability to function in the workplace.

Many of these manifestations (e.g. vulvovaginal candidiasis, pelvic inflammatory disease) occur in women with or without HIV infection, but can be more severe or resistant to treatment, or occur more frequently in a woman whose immune system is suppressed. Therefore, when evaluating the claim of a woman with HIV infection, it is important to consider gynecologic and other problems specific to women, including any associated symptoms (e.g., pelvic pain), in assessing the severity of the impairment and resulting functional limitations. Manifestations of HIV infection in women may be evaluated under the specific criteria (e.g., cervical cancer under 14.08E), under an applicable general category (e.g., pelvic inflammatory disease under 14.08A5) or, in appropriate cases, under 14.08N.

6. Evaluation. The criteria in 14.08 do not describe the full spectrum of diseases or conditions manifested by individuals with HIV infection. As in any case, consideration must be given to whether an individual's impairment(s) meets or equals in severity any other listing in appendix 1 of subpart P (e.g., a neoplastic disorder listed in 13.00ff). Although 14.08 includes cross-references to other listings for the more common manifestations of HIV infection, other listings may apply.

In addition, the impact of all impairments, whether or not related to HIV infection, must be considered. For example, individuals with HIV infection may manifest signs and symptoms of a mental impairment (e.g., anxiety, depression), or of another physical impairment. Medical evidence should include documentation of all physical and mental impairments, and the impairment(s) should be evaluated not only under the relevant listing(s) in 14.08, but under any other appropriate listing(s).

It is also important to remember that individuals with HIV infection, like all other individuals, are evaluated under the full five-step sequential evaluation process described in § 404.1520 and § 416.920. If an individual with HIV infection is working and engaging in substantial gainful activity (SGA), or does not have a severe impairment, the case will be decided at the first or second step of the sequential evaluation process, and does not require evaluation under these listings. For an individual with HIV infection who is not engaging in SGA and has a severe impairment, but whose impairment(s) does not meet or equal in severity the criteria of a listing, evaluation must proceed through the final steps of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard) before any conclusion can be reached on the issue of disability.

7. Effect of treatment. Medical treatment must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the specific disorder, or of the HIV infection itself (e.g., antiretroviral agents) and in terms of any side effects of treatment that may further impair the individual.

Response to treatment and adverse or beneficial consequences of treatment may vary widely. For example, an individual with HIV infection who develops pneumonia or tuberculosis may respond to the same antibiotic regimen used in treating individuals without HIV infection, but another individual with HIV infection may not respond to the same regimen. Therefore, each case must be considered on an individual basis, along with the effects of treatment on the individual's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long term. As such, the decision regarding the impact of treatment should be based on a sufficient period of treatment to permit proper consideration.

8. Functional criteria. Paragraph N of 14.08 establishes standards for evaluating manifestations of HIV infection that do not meet the requirements listed in 14.08A–M. Paragraph N is applicable for manifestations that are not listed in 14.08A–M, as well as those listed in 14.08A–M that do not meet the criteria of any of the rules in 14.08A–M.

For individuals with HIV infection evaluated under 14.08N, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the claimant's ability to function must be considered. Important factors to be considered in evaluating the functioning of individuals with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

As used in 14.08N, "repeated" means that the conditions occur on an average of 3 times a year, or once every 4 months, each lasting 2 weeks or more; or the conditions do not last for 2 weeks but occur substantially more frequently than 3 times in a year or once every 4 months; or they occur less often than an average of 3 times a year or once every 4 months but last substantially longer than 2 weeks.

To meet the criteria in 14.08N, an individual with HIV infection must demonstrate a marked level of restriction in one of three general areas of functioning: activities of daily living; social functioning; and difficulties in completing tasks due to deficiencies in concentration, persistence, or pace. Functional restrictions may result from the impact of the disease process itself on mental or physical functioning, or both. This could result from extended or intermittent symptoms, such as depression, fatigue, or pain, resulting in a limitation of the ability to concentrate, to persevere at a task, or to perform the task at an acceptable rate of speed. Limitations may also result from the side effects of medication.

When "marked" is used as a standard for measuring the degree of functional limitation, it means more than moderate, but less than extreme. A marked limitation does not represent a quantitative measure of the individual's ability to do an activity for a certain percentage of the time. A marked limitation may be present when several activities or functions are impaired or even when only one is impaired. However, an individual need not be totally precluded from performing an activity to have a marked limitation, as long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately, and effectively. The term "marked" does not imply that the impaired individual is confined to bed, hospitalized, or in a nursing home.

Activities of daily living include, but are not limited to, such activities as doing household chores, grooming and hygiene, using a post office, taking public transportation, and paying bills. An individual with HIV infection who, because of symptoms such as pain imposed by the illness or its treatment, is not able to maintain a household or take public transportation on a sustained basis or without assistance (even though he or she is able to perform some self-care activities) would have marked limitation of activities of daily living.

Social functioning includes the capacity to interact appropriately and communicate effectively with others. An individual with HIV infection who, because of symptoms or a pattern of exacerbation and remission caused by the illness or its treatment, cannot engage in social interaction on a sustained basis (even though he or she is able to communicate with close friends or relatives) would have marked difficulty maintaining social functioning.

Completing tasks in a timely manner involves the ability to sustain concentration, persistence, or pace to permit timely completion of tasks commonly found in work settings. An individual with HIV infection who, because of HIV-related fatigue or other symptoms, is unable to sustain concentration

or pace adequate to complete simple work-related tasks (even though he or she is able to do routine activities of daily living) would have marked difficulty completing tasks.

14.01 Category of Impairments, Immune System

14.02 Systemic lupus erythematosus. Documented as described in 14.00B1, with:

A. One of the following:

1. Joint involvement, as described under the criteria in 1.00; or

2. Muscle involvement, as described under the criteria in 14.05; or

3. Ocular involvement, as described under the criteria in 2.00ff; or

4. Respiratory involvement, as described under the criteria in 3.00ff; or

5. Cardiovascular involvement, as described under the criteria in 4.00ff or 14.04D; or

6. Digestive involvement, as described under the criteria in 5.00ff; or

7. Renal involvement, as described under the criteria in 6.00ff; or

8. Skin involvement, as described under the criteria in 8.00ff; or

9. Neurological involvement, as described under the criteria in 11.00ff; or

10. Mental involvement, as described under the criteria in 12.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

14.03 Systemic vasculitis. Documented as described in 14.00B2, including documentation by angiography or tissue biopsy, with:

A. Involvement of a single organ or body system, as described under the criteria in 14.02A.

or

B. Lesser involvement of two or more organs/body systems listed in 14.02A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

14.04 Systemic sclerosis and scleroderma. Documented as described in 14.00B3, with:

A. One of the following:

1. Muscle involvement, as described under the criteria in 14.05; or

2. Respiratory involvement, as described under the criteria in 3.00ff; or

3. Cardiovascular involvement, as described under the criteria in 4.00ff; or

4. Digestive involvement, as described under the criteria in 5.00ff; or

5. Renal involvement, as described under the criteria in 6.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

or

C. Generalized scleroderma with digital contractures.

or

D. Severe Raynaud's phenomena, characterized by digital ulcerations, ischemia, or gangrene.

14.05 Polymyositis or dermatomyositis. Documented as described in 14.00B4, with:

A. Severe proximal limb-girdle (shoulder and/or pelvic) muscle weakness, as described in 14.00B4.

or

B. Less severe limb-girdle muscle weakness than in 14.05A, associated with cervical muscle weakness and one of the following to at least a moderate level of severity:

1. Impaired swallowing with dysphagia and episodes of aspiration due to cricopharyngeal weakness, or

2. Impaired respiration due to intercostal and diaphragmatic muscle weakness.

or

C. If associated with malignant tumor, as described under the criteria in 13.00ff.

or

D. If associated with generalized connective tissue disease, described under the criteria in 14.02, 14.03, 14.04, or 14.06.

14.06 Undifferentiated connective tissue disorder. Documented as described in 14.00B5, and with impairment as described under the criteria in 14.02A, 14.02B, or 14.04.

14.07 Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, excepting HIV infection. Associated with documented, recurrent severe infection occurring 3 or more times within a 5-month period.

14.08 Human immunodeficiency virus (HIV) infection. With documentation as described in 14.00D3 and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (e.g., caused by M. avium-intracellulare, M. kansasii, or M. tuberculosis) at a site other than the lungs, skin, or cervical or hilar lymph nodes; or pulmonary tuberculosis resistant to treatment; or

2. Nocardiosis; or

3. Salmonella bacteremia, recurrent non-typhoid; or

4. Syphilis or neurosyphilis—evaluate sequelae under the criteria for the affected body system (e.g., 2.00 Special Senses and Speech, 4.00 Cardiovascular System, 11.00 Neurological); or

5. Multiple or recurrent bacterial infection(s), including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year.

or

B. Fungal infections:

1. Aspergillosis; or

2. Candidiasis, at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or candidiasis involving the esophagus, trachea, bronchi, or lungs; or

3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or

4. Cryptococcosis, at a site other than the lungs (e.g., cryptococcal meningitis); or

5. Histoplasmosis, at a site other than the lungs or lymph nodes; or

6. Mucormycosis.

or

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or

2. Pneumocystis carinii pneumonia or extrapulmonary pneumocystis carinii infection; or

3. Strongyloidiasis, extra-intestinal; or

4. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

or

D. Viral infections:

1. Cytomegalovirus disease (documented as described in 14.00D4b) at a site other than the liver, spleen, or lymph nodes; or

2. Herpes simplex virus causing:

a. Mucocutaneous infection (e.g., oral, genital, perianal) lasting for 1 month or longer; or

b. Infection at a site other than the skin or mucous membranes (e.g., bronchitis, pneumonitis, esophagitis, or encephalitis); or

c. Disseminated infection; or

3. Herpes zoster, either disseminated or with multidermatomal eruptions that are resistant to treatment; or

4. Progressive multifocal leukoencephalopathy; or

5. Hepatitis, as described under the criteria in 5.05.

or

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or

2. Kaposi's sarcoma with:

a. Extensive oral lesions; or

b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or

c. Involvement of the skin or mucous membranes, as described under the criteria in 14.08F; or

3. Lymphoma (e.g., primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkins lymphoma, Hodgkin's disease); or

4. Squamous cell carcinoma of the anus.

or

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above) with extensive fungating or ulcerating lesions not responding to treatment (e.g., dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal candida, condyloma caused by human papillomavirus, genital ulcerative disease), or evaluate under the criteria in 8.00ff.

or

G. Hematologic abnormalities:

1. Anemia, as described under the criteria in 7.02; or

2. Granulocytopenia, as described under the criteria in 7.15; or

3. Thrombocytopenia, as described under the criteria in 7.06.

or

H. Neurological abnormalities:

1. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses; or

2. Other neurological manifestations of HIV infection (e.g., peripheral neuropathy) as described under the criteria in 11.00ff.

or

I. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (or other significant involuntary weight loss, as described in 14.00D2) and, in the absence of a concurrent illness that could explain the findings, either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or

2. Chronic weakness and documented fever greater than 38° C (100.4° F) for the majority of 1 month or longer.

or

J. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

or

K. Cardiomyopathy, as described under the criteria in 4.00ff or 11.04.

or

L. Nephropathy, as described under the criteria in 6.00ff.

or

M. One or more of the following infections (other than described in A–L, above), resistant to treatment or requiring hospitalization or intravenous treatment 3 or more times in 1 year (or evaluate sequelae under the criteria for the affected body system).

1. Sepsis; or
2. Meningitis; or
3. Pneumonia; or
4. Septic arthritis; or
5. Endocarditis; or
6. Radiographically documented sinusitis.

or

N. Repeated (as defined in 14.00D8) manifestations of HIV infection (including those listed in 14.08A–M, but without the requisite findings, e.g., carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08J, or other manifestations, e.g., oral hairy leukoplakia, myositis) resulting in significant, documented symptoms or signs (e.g., fatigue, fever, malaise, weight loss, pain, night sweats) and one of the following at the marked level (as defined in 14.00D8):

1. Restriction of activities of daily living; or

2. Difficulties in maintaining social functioning; or

3. Difficulties in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

9. The table of contents for part B of appendix 1 (Listing of Impairments) to subpart P is amended by adding an entry for 114.00 to read as follows:

Part B

* * * * *

Sec.

* * * * *

114.00 Immune System

10. In part B of appendix 1 (Listing of Impairments) to subpart P, 110.00B is amended by removing the last sentence.

11. In part B of appendix 1 (Listing of Impairments) to subpart P, Listing 110.09, Immune deficiency disease, is removed.

12. In part B of appendix 1 (Listing of Impairments) to subpart P, 114.00 is added to read as follows:

114.00 Immune System

A. Listed disorders include impairments involving deficiency of one or more components of the immune system (i.e., antibody-producing B cells; a number of different types of cells associated with cell-mediated immunity including T-lymphocytes, macrophages and monocytes; and components of the complement system).

B. Dysregulation of the immune system may result in the development of a connective tissue disorder. Connective tissue disorders include several chronic multisystem disorders that differ in their clinical manifestation, course, and outcome. These disorders are described in part A, 14.00B.

Some of the features of connective tissue disorders in children may differ from the features in adults. When the clinical features are the same as that seen in adults, the principles and concepts in part A, 14.00B apply.

The documentation needed to establish the existence of a connective tissue disorder is medical history, physical examination, selected laboratory studies, medically acceptable imaging techniques and, in some instances, tissue biopsy. However, the Social Security Administration will not purchase diagnostic tests or procedures that may involve significant risk, such as biopsies or angiograms. Generally, the existing medical evidence will contain this information.

In addition to the limitations caused by the connective tissue disorder *per se*, the chronic adverse effects of treatment (e.g., corticosteroid-related ischemic necrosis of bone) may result in functional loss.

A longitudinal clinical record of at least 3 months demonstrating active disease despite prescribed treatment during this period with the expectation that the disease will remain active for 12 months is necessary for assessment of severity and duration of impairment.

In children the impairment may affect growth, development, attainment of age-appropriate skills, and performance of age-appropriate activities. The limitations may be the result of loss of function or failure in a single organ or body system, or a lesser degree of functional loss in two or more organs/body systems that, in combination with significant constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss, results in listing-level limitations. We use the term "severe" in these listings to describe medical severity; the term does not have the same meaning as it does when we use it in connection with a finding at the second step of the sequential evaluation processes in §§ 404.1520, 416.920, and 416.924.

C. Allergies, growth impairments and Kawasaki disease.

1. Allergic disorders (e.g., asthma or atopic dermatitis) are discussed and evaluated under the appropriate listing of the affected body system.

2. If growth is affected by the disorder or its treatment by immunosuppressive drugs, 100.00 may apply.

3. Kawasaki disease, also known as mucocutaneous lymph node syndrome, is characterized by multisystem manifestations, but significant functional impairment is usually due to disease of the coronary arteries, which should be evaluated under 104.00.

D. Human immunodeficiency virus (HIV) infection.

1. HIV infection is caused by a specific retrovirus and may be characterized by susceptibility to one or more opportunistic diseases, cancers, or other conditions, as described in 114.08. Any child with HIV infection, including one with a diagnosis of acquired immunodeficiency syndrome (AIDS), may be found disabled under this listing if his or her impairment meets any of the criteria in 114.08 or is of equivalent severity to an impairment in 114.08.

2. Definitions. In 114.08, the terms "resistant to treatment," "recurrent," and "disseminated" have the same general meaning as used by the medical community. The precise meaning of any of these terms will depend upon the specific disease or condition in question, the body system affected, the usual course of the disorder and its treatment, and the other circumstances of the case.

"Resistant to treatment" means that a condition did not respond adequately to an appropriate course of treatment. Whether a response is adequate, or a course of treatment appropriate, will depend on the facts of the particular case.

"Recurrent" means that a condition that responded adequately to an appropriate course of treatment has returned after a period of remission or regression. The extent of response (or remission) and the time periods involved will depend on the facts of the particular case.

"Disseminated" means that a condition is spread widely over a considerable area or body system(s). The type and extent of the spread will depend on the specific disease.

3. Documentation of HIV infection in children. The medical evidence must include documentation of HIV infection. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of HIV infection in children by definitive diagnosis. A definitive diagnosis of HIV infection in children is documented by one or more of the following laboratory tests:

i. For a child 24 months of age or older, a serum specimen that contains HIV antibodies. HIV antibodies are usually detected by a screening test. The most commonly used screening test is the ELISA. Although this test is highly sensitive, it may yield false positive results. Therefore, positive results from an ELISA must be

confirmed by a more definitive test (e.g., Western blot, immunofluorescence assay). (See paragraph b, below, for information about HIV antibody testing in children younger than 24 months of age).

ii. A specimen that contains HIV antigen (e.g., serum specimen, lymphocyte culture, or cerebrospinal fluid (CSF) specimen).

iii. An immunoglobulin A (IgA) serological assay specific for HIV.

iv. Other test(s) that are highly specific for detection of HIV in children (e.g., polymerase chain reaction (PCR)), or that are acceptable methods of detection consistent with the prevailing state of medical knowledge.

When laboratory testing for HIV infection has been performed, every reasonable effort must be made to obtain reports of the results of that testing.

b. Other acceptable documentation of HIV infection in children.

As noted in paragraph a, above, HIV infection is not documented in children under 24 months of age by a serum specimen containing HIV antibodies. This is because women with HIV infection often transfer HIV antibodies to their newborns. The mother's antibodies can persist in the infant for up to 24 months, even if the infant is not HIV-infected. Only 20 to 30 percent of such infants are actually infected. Therefore, the presence of serum HIV antibodies alone does not establish the presence of HIV infection in a child under 24 months of age. However, the presence of HIV antibodies accompanied by evidence of significantly depressed T-helper lymphocytes (CD4), an abnormal CD4/CD8 ratio, or abnormal immunoglobulin G (IgG) may be used to document HIV infection in a child under 24 months of age, even though such testing is not a basis for a definitive diagnosis.

For children from birth to the attainment of 24 months of age who have tested positive for HIV antibodies (see D3a above), HIV infection may be documented by one or more of the following:

i. For an infant 12 months of age or less, a CD4 (T4) count of 1500/mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

ii. For an infant from 12 to 24 months of age, a CD4 (T4) count of 750/mm^3 or less, or a CD4 count less than or equal to 20 percent of total lymphocytes.

iii. An abnormal CD4/CD8 ratio.

iv. An IgG significantly greater than or less than the normal range for age.

HIV infection in children may also be documented without the definitive laboratory evidence described in paragraph a, or the other laboratory evidence discussed above, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If such laboratory evidence is not available, HIV infection may be documented by the medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. For example, a diagnosis of HIV infection in children will be accepted without definitive laboratory evidence if the child has an opportunistic disease (e.g., Pneumocystis carinii pneumonia (PCP)) predictive of a defect in cell-mediated immunity, and there is no other known cause of diminished resistance to that disease (e.g., long-term steroid treatment, lymphoma). In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

4. Documentation of the manifestations of HIV infection in children. The medical evidence must also include documentation of the manifestations of HIV infection in children. Documentation may be by laboratory evidence or by other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

a. Documentation of the manifestations of HIV infection in children by definitive diagnosis.

The definitive method of diagnosing opportunistic diseases or conditions that are manifestations of HIV infection in children is by culture, serological test, or microscopic examination of biopsied tissue or other material (e.g., bronchial washings). Therefore, every reasonable effort must be made to obtain specific laboratory evidence of an opportunistic disease or other condition whenever this information is available. If a histological or other test has been performed, the evidence should include a copy of the appropriate report. If the report is not obtainable, the summary of hospitalization or a report from the treating source should include details of the findings and results of the diagnostic studies (including radiographic studies) or microscopic examination of the appropriate tissues or body fluids.

Although a reduced CD4 lymphocyte count in a child may show that there is an increased susceptibility to opportunistic infections and diseases, that alone does not document the presence, severity, or functional effects of a manifestation of HIV infection in a child.

b. Other acceptable documentation of the manifestations of HIV infection in children.

Manifestations of HIV infection in children may also be documented without the definitive laboratory evidence described in paragraph a, provided that such documentation is consistent with the prevailing state of medical knowledge and clinical practice and is consistent with the other evidence. If no definitive laboratory evidence is available, manifestations of HIV infection may be documented by medical history, clinical and laboratory findings, and diagnosis(es) indicated in the medical evidence. In such cases, every reasonable effort must be made to obtain full details of the history, medical findings, and results of testing.

Documentation of cytomegalovirus (CMV) disease (114.08D) presents special problems because diagnosis requires identification of viral inclusion bodies or a positive culture from the affected organ, and the absence of any other infectious agent. A positive serology test identifies infection with the virus, but does not confirm a disease process. With the exception of chorioretinitis (which may be diagnosed by an ophthalmologist), documentation of CMV disease requires confirmation by biopsy or other generally acceptable methods consistent with the prevailing state of medical knowledge and clinical practice.

5. HIV infection in children. The clinical manifestation and course of disease in children who become infected with HIV perinatally or in the first 6 years of life may differ from that in older children and adults. In addition, survival times are shorter for children infected in the first year of life compared to those who become infected as older children or as adults. Infants may present with failure to thrive or pneumocystis carinii pneumonia (PCP); young children may present with recurrent infections, neurological problems, or developmental abnormalities. Older children may also exhibit neurological abnormalities, such as HIV encephalopathy, or failure to thrive.

The methods of identifying and evaluating neurological abnormalities may vary depending on a child's age. For example, in an infant, impaired brain growth can be documented by a decrease in the growth rate of the head. In older children, impaired brain growth can be documented by brain atrophy on a CAT scan. Neurological abnormalities can also be observed in a younger child in the loss of previously acquired, or marked delays in achieving, developmental milestones. In an older child, this type of neurological abnormality would generally be demonstrated by the loss of previously acquired intellectual abilities. Although loss of previously acquired intellectual abilities can be documented by a decrease in intelligence quotient (IQ) scores or demonstrated if a child forgets information he or she previously learned, it can also be shown if the child is unable to learn new information. This could include the sudden acquisition of a new learning disability.

Children with HIV infection may contract any of a broad range of bacterial infections. Certain major infections caused by pyogenic bacteria, e.g., some pneumonias, can be severely limiting, especially in pre-adolescent children. These major bacterial infections should be evaluated under 114.08A5, which requires two or more such infections within a 2-year period. Although 114.08A5 applies only to children less than 13 years of age, an older child may be found to have an impairment of equivalent severity if the circumstances of the case warrant (e.g., delayed puberty).

Otherwise, bacterial infections are evaluated under 114.08A6. The criteria of the listing are met if one or more bacterial infection(s) occurs and requires hospitalization or intravenous antibiotic treatment 3 or more times in 1 year. Pelvic inflammatory disease in older female children should be evaluated under multiple or recurrent bacterial infections (114.08A6).

6. Evaluation of HIV infection in children. The criteria in 114.08 do not describe the full spectrum of diseases or conditions manifested by children with HIV infection. As in any case, consideration must be given to whether a child's impairment(s) meets or equals in severity any other listing in appendix 1 of subpart P (e.g., a neoplastic disorder listed in 113.00ff). Although 114.08 includes cross-references to other listings for the more common manifestations of HIV infection, additional listings may also apply.

In addition, the impact of all impairments, whether or not related to the HIV infection, must be considered. Children with HIV infection may manifest signs and symptoms of a mental impairment (e.g., anxiety, depression), or of another physical impairment. Medical evidence should include documentation of all physical and mental impairments and the impairment(s) should be evaluated not only under the relevant listing(s) in 114.08, but under any other appropriate listing(s).

It is also important to remember that children with HIV infection, like all others, are evaluated under the full sequential evaluation process described in § 416.924. If a child with HIV infection is working and engaging in substantial gainful activity (SGA), or does not have a severe impairment, the case will be decided at the first or second step of the sequential evaluation process, and does not require evaluation under these listings. For a child with HIV infection who is not engaging in SGA and has a severe impairment, but whose impairment(s) does not meet the criteria of a listing, consideration will be given to whether the child's impairment or combination of impairments is either medically or functionally equivalent in severity to any listed impairment. If the child's impairment or impairments do not meet or equal a listing in severity, evaluation must proceed through the final step(s) of the sequential evaluation process (or, as appropriate, the steps in the medical improvement review standard) before any conclusion can be reached on the issue of disability.

7. Effect of treatment. Medical treatment must be considered in terms of its effectiveness in ameliorating the signs, symptoms, and laboratory abnormalities of the specific disorder, or of the HIV infection itself (e.g. antiretroviral agents) and in terms of any side effects of treatment that may further impair the child.

Response to treatment and adverse or beneficial consequences of treatment may vary widely. For example, a child with HIV infection who develops otitis media may respond to the same antibiotic regimen used in treating children without HIV infection, but another child with HIV infection may not respond to the same regimen. Therefore, each case must be considered on an individual basis, along with the effects of treatment on the child's ability to function.

A specific description of the drugs or treatment given (including surgery), dosage, frequency of administration, and a description of the complications or response to treatment should be obtained. The effects of treatment may be temporary or long-term. As such, the decision regarding the impact of treatment should be based on a sufficient period of treatment to permit proper consideration.

8. Functional criteria. Paragraph O of 114.08 establishes standards for evaluating manifestations of HIV infection that do not meet the requirements listed in 114.08A-N. Paragraph O is applicable for manifestations that are not listed in 114.08A-N, as well as those listed in 114.08A-N that do not meet the criteria of any of the rules in 114.08A-N.

For children with HIV infection evaluated under 114.08O, listing-level severity will be assessed in terms of the functional limitations imposed by the impairment. The full impact of signs, symptoms, and laboratory findings on the child's ability to function must be considered. Important factors to be considered in evaluating the functioning of children with HIV infection include, but are not limited to: symptoms, such as fatigue and pain; characteristics of the illness, such as the frequency and duration of manifestations or periods of exacerbation and remission in the disease course; and the functional impact of treatment for the disease, including the side effects of medication.

To meet the criteria in 114.08O, a child with HIV infection must demonstrate a level of restriction in either one or two (depending on the child's age) of the general areas of functioning applicable to the child's age group. (See 112.00C for additional discussion of these areas of functioning).

114.01 Category of Impairments, Immune System

114.02 Systemic lupus erythematosus. Documented as described in 14.00B1 and 114.00B, with:

A. One of the following:

1. Growth impairment, as described under the criteria in 100.00ff; or

2. Musculoskeletal involvement, as described under the criteria in 101.00ff; or

3. Muscle involvement, as described under the criteria in 14.05; or

4. Ocular involvement, as described under the criteria in 102.00ff; or

5. Respiratory involvement, as described under the criteria in 103.00ff; or

6. Cardiovascular involvement, as described under the criteria in 104.00ff or 14.04D; or

7. Digestive involvement, as described under the criteria in 105.00ff; or

8. Renal involvement, as described under the criteria in 106.00ff; or

9. Hematologic involvement, as described under the criteria in 107.00ff; or

10. Skin involvement, as described under the criteria in 8.00ff; or

11. Endocrine involvement, as described under the criteria in 109.00ff; or

12. Neurological involvement, as described under the criteria in 111.00ff; or

13. Mental involvement, as described under the criteria in 112.00ff.

or

B. Lesser involvement of two or more organs/body systems listed in paragraph A, with significant, documented, constitutional symptoms and signs of severe fatigue, fever, malaise, and weight loss. At least one of the organs/body systems must be involved to at least a moderate level of severity.

114.03 Systemic vasculitis. As described under the criteria in 14.03 or, if growth impairment, as described under the criteria in 100.00ff.

114.04 Systemic sclerosis and scleroderma. Documented as described in 14.00B3 and 114.00B, and:

A. As described under the criteria in 14.04 or, if growth impairment, as described under the criteria in 100.00ff.

or

B. Linear scleroderma, with one of the following:

1. Fixed valgus or varus deformities of both hands or both feet; or

2. Marked destruction or marked atrophy of an extremity; or

3. Facial disfigurement from hypoplasia of the mandible, maxilla, or zygoma resulting in an impairment as described under the criteria in 112.00ff; or

4. Seizure disorder, as described under the criteria in 111.00ff.

114.05 Polymyositis or dermatomyositis. Documented as described in 14.00B4 and 114.00B, and:

A. As described under the criteria in 14.05.

or

B. With one of the following:

1. Multiple joint contractures; or

2. Diffuse cutaneous calcification with formation of an exoskeleton; or

3. Systemic vasculitis as described under the criteria in 14.03.

114.06 Undifferentiated connective tissue disorder. As described under the criteria in 114.02 or 114.04.

114.07 Congenital immune deficiency disease.

A. Hypogammaglobulinemia or dysgammaglobulinemia, with:

1. Documented, recurrent severe infections occurring 3 or more times within a 5-month period; or

2. An associated disorder such as growth retardation, chronic lung disease, collagen disorder or tumor. Evaluate according to the appropriate body system listing.

or

B. Thymic dysplastic syndromes (such as Swiss, diGeorge).

114.08 Human immunodeficiency virus (HIV) infection. With documentation as described in 114.00D3 and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (e.g., caused by M. avium-intracellulare, M. kansasii, or M. tuberculosis) at a site other than the lungs, skin, or cervical or hilar lymph nodes; or pulmonary tuberculosis resistant to treatment; or

2. Nocardiosis; or

3. Salmonella bacteremia, recurrent non-typhoid.

4. Syphilis or neurosyphilis—evaluate sequelae under the criteria for the affected body system (e.g., 102.00 Special Senses and Speech, 104.00 Cardiovascular System, 111.00 Neurological); or

5. In a child less than 13 years of age, multiple or recurrent pyogenic bacterial infection(s) of the following types: sepsis, pneumonia, meningitis, bone or joint infection, or abscess of an internal organ or body cavity (excluding otitis media or superficial skin or mucosal abscesses) occurring 2 or more times in 2 years; or

6. Other multiple or recurrent bacterial infection(s), including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment 3 or more times in 1 year.

or

B. Fungal infections:

1. Aspergillosis; or

2. Candidiasis, at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or candidiasis involving the esophagus, trachea, bronchi, or lungs; or

3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or

4. Cryptococcosis, at a site other than the lungs (e.g., cryptococcal meningitis); or

5. Histoplasmosis, at a site other than the lungs or lymph nodes; or

6. Mucormycosis.

or

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or

2. Pneumocystis carinii pneumonia or extrapulmonary pneumocystis carinii infection; or

3. Strongyloidiasis, extra-intestinal; or

4. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

or

D. Viral infections:

1. Cytomegalovirus disease (documented as described in 114.00D4b) at a site other than the liver, spleen, or lymph nodes; or

2. Herpes simplex virus causing:

a. Mucocutaneous infection (e.g., oral, genital, perianal) lasting for 1 month or longer; or

b. Infection at a site other than the skin or mucous membranes (e.g., bronchitis, pneumonitis, esophagitis, or encephalitis); or

c. Disseminated infection; or

3. Herpes zoster, either disseminated or with multidermatomal eruptions that are resistant to treatment; or

4. Progressive multifocal leukoencephalopathy; or

5. Hepatitis, as described under the criteria of 105.05.

or

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or

2. Karposi's sarcoma with:

a. Extensive oral lesions; or

b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or

c. Involvement of the skin or mucous membranes as described under the criteria of 114.08F; or

3. Lymphoma (e.g., primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other Non-Hodgkin's lymphoma, Hodgkin's disease); or

4. Squamous cell carcinoma of the anus.

or

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3 above) with extensive fungating or ulcerating lesions not responding to treatment (e.g., dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal candida, condyloma caused by human papillomavirus, genital ulcerative disease), or evaluate under the criteria in 8.00ff.

or

G. Hematologic abnormalities:

1. Anemia, as described under the criteria in 7.02; or

2. Granulocytopenia, as described under the criteria in 7.15; or

3. Thrombocytopenia, as described under the criteria of 107.06 or 7.06.

or

H. Neurological manifestations of HIV infection (e.g., HIV encephalopathy, peripheral neuropathy), as described under the criteria in 111.00ff, or resulting in one or more of the following:

1. Loss of previously acquired, or marked delay in achieving, developmental milestones or intellectual ability (including the sudden acquisition of a new learning disability); or

2. Impaired brain growth (acquired microcephaly or brain atrophy—see 114.00D5); or

3. Progressive motor dysfunction affecting gait and station or fine and gross motor skills.

or

I. Growth disturbance, with:

1. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall of 15 percentiles from established growth curve (on standard growth charts) that persists for 2 months or longer; or

2. An involuntary weight loss (or failure to gain weight at an appropriate rate for age) resulting in a fall to below the third percentile from established growth curve (on standard growth charts) that persists for 2 months or longer; or

3. Involuntary weight loss greater than 10 percent of baseline that persists for 2 months or longer; or

4. Growth impairment as described under the criteria in 100.00ff.

or

J. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

or

K. Cardiomyopathy, as described under the criteria in 104.00ff or 11.04.

or

L. Lymphoid interstitial pneumonia/pulmonary lymphoid hyperplasia (LIP/PLH complex), with respiratory symptoms that significantly interfere with age-appropriate activities, and that cannot be controlled by prescribed treatment.

or

M. Nephropathy, as described under the criteria in 106.00.

or

N. One or more of the following infections (other than described in A–M, above), resistant to treatment or requiring hospitalization or intravenous treatment 3 or more times in 1 year (or evaluate sequelae under the criteria for the affected body system):

1. Sepsis;

2. Meningitis; or

3. Pneumonia; or

4. Septic arthritis; or

5. Endocarditis; or

6. Radiographically documented sinusitis.

or

O. Any other manifestation(s) of HIV infection (including any listed in 114.08A–N, but without the requisite findings, e.g., oral candidiasis not meeting the criteria in 114.08F, diarrhea not meeting the criteria in 114.08J, or any other manifestation(s), e.g., oral hairy leukoplakia, hepatomegaly), resulting in one of the following:

1. For children from birth to attainment of age 1, at least one of the criteria in paragraphs A–E of 112.12; or

2. For children age 1 to attainment of age 3, at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or

3. For children age 3 to attainment of age 18, at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD51

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise our regulations, describing how we make findings of presumptive disability or presumptive blindness. The revisions clarify our presumptive disability rules and incorporate into the regulations procedures that are now in our operating instructions. These are revised procedures we have been using to make findings of presumptive disability for people who allege infection with the human immunodeficiency virus (HIV). Our prior rules permitted employees in Social Security Administration (SSA) Field Offices to make findings of presumptive disability in claims involving HIV infection only upon confirmation by a licensed physician that an individual had a diagnosis of acquired immunodeficiency syndrome (AIDS). This final rule allows Field Office employees to make findings of presumptive disability for individuals with HIV infection whose disease manifestations are of listing-level severity. We have also made changes in the final rule in response to suggestions from commenters and have made editorial changes to clarify the language of the proposed rule.

EFFECTIVE DATE: This rule is effective July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or Richard M. Bresnick, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–6243 or 965–1758.

SUPPLEMENTARY INFORMATION: Under section 1631(a)(4)(B) of the Social Security Act (the Act) and implementing regulations, we may pay a person supplemental security income (SSI) benefits on the basis of presumptive disability or presumptive blindness before we make a formal determination of disability or blindness. Findings of presumptive disability or presumptive blindness may be made when the available evidence reflects a high degree of probability that the individual will be found disabled or blind when complete evidence is obtained, and he or she meets the nonmedical eligibility requirements. Currently, presumptive disability or presumptive blindness payments may be made for no more than 6 months. (Prior to May 1, 1991, the effective date of section 5038 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, presumptive disability or presumptive blindness payments could be made for no more than 3 months.)

Findings of presumptive disability or presumptive blindness may be made at our Social Security Field Offices or at the State agencies that make SSI disability determinations. Generally the employees at our Social Security Field Offices are not trained disability experts; therefore, they are currently authorized to make findings of presumptive disability or presumptive blindness only for HIV with confirmation that the disease manifestations are of listing-level severity or for readily observable impairments (for example, amputation of two limbs), which are specified in § 416.934. We are not changing § 416.934 in this final rule.

Disability adjudicators at the State agencies are specialists in the evaluation of disability and, therefore, may make findings of presumptive disability or presumptive blindness in any case involving any impairment or combination of impairments in which the available evidence is sufficient to establish a high degree of probability that the individual is disabled or blind.

The list of readily observable impairment categories in § 416.934 previously included a category for AIDS. However, on December 18, 1991, we published a final rule in the **Federal Register** (56 FR 65682) removing § 416.934(k), the provision for finding presumptive disability based on AIDS. Although AIDS was included on the list of readily observable impairments in § 416.934 that do not require confirming medical evidence, the regulation explicitly required diagnosis by a licensed physician and was, therefore, different from the other impairment categories. The preamble to the final rule explained in detail our reasons for removing the section (56 FR at 65682–65683). In brief, we removed it because we revised our procedures for making findings of presumptive disability for people who allege HIV infection (including AIDS) and whose disease manifestations are of listing-level severity. The revised procedures allow us to identify individuals who can be found presumptively disabled because of HIV infection at the earliest stage in the application process.

This final rule incorporates into the regulations a specific provision for establishing presumptive disability for people who have HIV infection (including AIDS) of listing-level severity. Our operating instructions provide that Social Security Field Offices may make findings of presumptive disability for any person who is infected with the HIV—not only one who is diagnosed as having AIDS—when the claimant's medical source provides us with information that confirms that the claimant demonstrates disease manifestations of listing-level severity. Using these procedures we are able to make findings of presumptive disability for HIV-infected claimants earlier in the process, and also expedite the formal determinations of disability in many claims.

The final rule is also sufficiently flexible that it can be made consistent with any future listing for HIV infection, any future medical research on the illness, and any revision of our operating instructions about claims involving HIV infection or other impairments. Thus, the new rule will help us ensure that eligibility for presumptive disability payments is routinely and expeditiously considered for eligible claimants with HIV infection.

Under the new procedures used in HIV claims, the Social Security Field Office generally mails a check-block form to the claimant's physician or other medical source for completion and return to the Social Security Field Office. (There are separate forms for documenting the manifestations of HIV infection in adults and children.) Personnel in the Social Security Field Office may also contact the claimant's physician or other medical source by telephone to verify the presence of HIV disease manifestations. The claimant may also directly request his or her medical source to complete the check-block form, copies of which have been made available to physicians and others upon request.

The check-block form lists manifestations of HIV infection that we currently consider sufficient to establish listing-level severity. Of course, if the Social Security Field Office is unable to make a finding of presumptive disability, the State agency may still make such a finding at any time that the evidence is sufficient to establish a high degree of probability that the individual is disabled.

After a presumptive disability finding is made, the State agency completes the development of the evidence and decides the claim using the full sequential evaluation process for determining if the requirements for establishing disability are met. We believe that the information obtained on the check-block form by the Social Security Field Office has helped to expedite the formal determination process at the State agency by helping the State agency pinpoint the kind of evidence it will need to obtain for its formal disability determination. The use of the check-block form does not preclude full evaluation of the case as provided in our regulations. All relevant evidence will always be considered in making the formal disability determination.

In the following sections, we describe the specific revisions we have made.

Explanation of Final Rule

Section 416.933 How We Make a Finding of Presumptive Disability or Presumptive Blindness

We revised the language and structure of the proposed rule to more closely parallel the language of the prior rule in order to maintain flexibility in making presumptive disability findings. We retained the explanation that we make a finding of presumptive disability in HIV cases based on disease manifestations of listing-level severity.

In a technical correction, we revised the first sentence of the final rule to replace the reference to the presumptive disability or presumptive blindness "decision" with a reference to the presumptive disability or presumptive blindness "finding." The word "decision" is a term of art in our regulations and is not applicable to findings of presumptive disability or presumptive blindness. Under § 416.1401 of the regulations, a "decision" means the decision made by

an administrative law judge or the Appeals Council. Therefore, it does not refer to the findings of presumptive disability and presumptive blindness made by Social Security Field Offices and State agencies. In any case, we use the word "finding" at the beginning of the sentence and later on in § 416.933, as well as in §§ 416.932 and 416.934. Therefore, this nonsubstantive revision also provides consistency within the rules.

As in the proposed rule, we deleted the word "severe" from the phrase "readily observable severe impairments," which was in the second sentence of the prior rule. The word "severe" is a technical term in our disability rules that does not have the same meaning we intend in the context of this sentence.

The third sentence of the final rule, which is based on the fourth sentence in the proposed rule, now corresponds to the third sentence in the prior rule. As proposed, we deleted the words "disability evaluators" from the prior rule and replaced them with the word "us." Under § 416.902, the term "us" is defined to refer to either the Social Security Administration or the State agency making the disability determination. Therefore, this technical revision is a clearer statement of who "disability evaluators" are.

In response to a comment, described below, we deleted the third, fifth, and sixth sentences of the proposed rule to maintain flexibility in applying the presumptive disability rule in the future. For the same reason, we revised the penultimate sentence of the final rule to provide that HIV is an "example" of an impairment on which we may make a finding of presumptive disability based on medical evidence. We modified the last sentence of the proposed rule to clarify that the State agency may make a finding of presumptive disability or presumptive blindness for any type of impairment and at any stage of the development process at which the medical evidence or other evidence justifies such a finding.

Finally, we made minor editorial changes to correct spelling and punctuation throughout the final rule. These changes are not substantive and do not change the meaning of the rule in any way.

Public Comments

These regulations were published in the **Federal Register** (56 FR 65714) as a Notice of Proposed Rulemaking (NPRM) on December 18, 1991. Interested persons, organizations, and groups were invited to submit comments pertaining to the proposed rule within a period of 60 days from the date of publication of the NPRM. The comment period ended on February 18, 1992.

We received 50 comments from individuals, physicians, other medical professionals, medical and legal associations, Government agencies, and organizations that represent the interests of individuals who are infected with the HIV. Many of the written comments, by necessity, had to be condensed, summarized or paraphrased. In doing this, we believe that we have expressed everyone's views adequately and have responded to the issues raised. After carefully considering the comments contained in the letters we received regarding the proposed rule, we are adopting the proposed rule with modifications.

Many of the comments referred to the content of the proposed HIV listings, which we also published as proposed rules on December 18, 1991 (see 56 FR 65702) rather than the presumptive disability rule. For example, some commenters asked us to provide automatic presumptive disability allowances for Kaposi's sarcoma, HIV wasting syndrome, extrapulmonary tuberculosis, chronic anemia, conditions particular to women, and infants with the HIV antibody. Some commenters also referred to the proposed functional criteria in the listing and the issue of the documentation of HIV infection and its manifestations. Because the focus of these comments was on the proposed listings, not the presumptive disability process, we have not included them in this preamble. However, we have included the relevant comments and our responses in the final Immune Body System Listings, which we are publishing separately.

Comment: One commenter believed that the new Social Security Field Office presumptive disability procedures would not result in the identification of disabled individuals at the earliest possible stage in the application process. The commenter suggested that presumptive disability payments could be made for individuals with HIV-related conditions based on the applicant's own report. The commenter said that contact with a physician would be necessary only if an applicant's report was not sufficient.

Response: We did not adopt the suggestion to allow a Social Security Field Office employee to make a presumptive disability finding for claimants with HIV infection based on the applicant's own report of his or her condition because such allegations, without additional confirmation, would not be sufficient to establish a high degree of probability that the claimant is disabled. Generally, the only time Social Security Field Office employees may make a finding of presumptive disability based on a claimant's allegation is when the allegations are confirmed by the presence of a readily observable impairment (e.g., amputation of two limbs). In claims involving HIV infection, the disease manifestations are varied and may not be readily observable. Therefore, it is not appropriate to make a finding of presumptive disability based only on a claimant's allegation of his or her manifestations of HIV infection. We do, however, request the information needed to confirm the manifestations of HIV infection when a claimant alleges HIV infection.

Our presumptive disability procedures for claims involving HIV infection allow us to make findings of presumptive disability at the earliest stage in the application process through the use of the check-block form and direct contact with medical sources by our Social Security Field Office personnel to verify disease manifestations of listing-level severity. For example, our internal operating instructions provide flexibility for our Social Security Field Office employees to accept confirmation of listing-level severity for presumptive disability purposes from a medical source, such as a member of a hospital or clinic staff. Therefore, a presumptive disability finding can be made at the earliest stage in the application process, i.e., at the time of the application or shortly thereafter.

Comment: One commenter thought that the proposed rule for making findings of presumptive disability or presumptive blindness was flawed because it assumed that every applicant would have had access to a level of medical care that would fully diagnose and document his or her condition. The commenter asserted that poor applicants need SSI eligibility to get the medical care that would adequately document their conditions and prove disability, but cannot establish SSI eligibility until disability is proven. This commenter suggested that the proposed rule be changed to allow a finding of presumptive disability based on a standard of "significant probability" that an individual is disabled rather than a "high degree of probability," as stated in our prior rule and the proposed rule. The commenter acknowledged that this lower standard would allow some people who are not disabled to receive benefits for a few

months until their claims are adjudicated.

Response: We are aware that our applicants, particularly SSI applicants, may have difficulty securing medical care, and may not have adequate medical evidence to support their claims for benefits. However, our presumptive disability procedures take cognizance of this fact insofar as findings of presumptive disability are concerned, and we have other rules which ensure that no individual is excluded from the disability program because of an inability to obtain appropriate medical care.

Our presumptive disability procedures for HIV infection do not require an individual to provide documentation that will "fully diagnose and document" the condition, as the commenter stated, nor do they require an individual to be in a program of medical care. They require only that a medical source who has seen the claimant provide us with information (on a check-block form, over the telephone, or in any other way) that confirms the individual has symptomatic HIV infection that meets the severity of listing-level criteria for HIV. We do not require the source to provide supporting information at this point, and the claimant does not have to be in treatment. Moreover, we will accept this information from any medical source. Therefore, our procedures do not require us to develop the evidence fully to find that there is a high degree of probability that the individual is disabled.

The purpose of the presumptive disability provision is not to obtain evidence to adjudicate claims, but to expedite the payment of benefits to presumptively disabled people. We have separate rules to aid those claimants who do not have medical evidence, or sufficient medical evidence, to pursue their claims. SSI eligibility is not needed to obtain this medical evidence. We will purchase a consultative examination(s) to obtain the medical evidence to adjudicate a claim whenever it is needed, whether to establish a medical record or to perfect the existing medical record. Moreover, because we share the commenter's concern to ensure that benefits are expedited to all eligible claimants alleging HIV infection, we have recently issued operating instructions that direct the Social Security Field Office to "flag" any HIV claims where there is no apparent medical source to confirm the claimant's allegations. This procedure alerts the State agency personnel immediately on receipt of the claim that a consultative examination is needed. The consultative examination may be quickly scheduled to obtain the needed information to adjudicate the claim.

For the reasons given in the preceding response, however, we cannot remove the requirement that our Social Security Field Office employees confirm the manifestations of HIV infection with a medical source. We also did not adopt the suggestion to change the final rule to permit a finding of presumptive disability based on a "significant probability" rather than a "high degree of probability" that an individual will be found disabled at the formal disability determination. The payments made on the basis of a presumptive disability finding are intended to go to those whose conditions we can determine are most likely to be disabling when full documentation is obtained and a formal disability determination is made. Our implementing regulations have always provided that this likelihood be demonstrated by a high degree of probability of disability.

Comment: One commenter suggested that we revise the language in the proposed rule which indicated that HIV infection was an exception to the rule that findings of presumptive disability based on medical evidence would generally be made only by the State agency, in order to permit application of the new rule to other impairment categories.

Response: We adopted this comment. We revised the rule to more closely parallel the language of the prior rule so as to maintain flexibility to apply this provision to other impairment categories. In addition, we have cited HIV as an example, as opposed to an exception.

Comment: Many commenters suggested that in cases involving individuals with HIV infection, the regulation should specify that a finding of presumptive disability may be made at any stage of the appeals process because people with HIV-related impairments, which may not initially qualify them for benefits, rapidly develop new, and disabling, medical conditions.

Response: We did not adopt this suggestion because it is inconsistent with the statute. Section 1631(a)(4)(B) of the Act permits us to pay a person SSI benefits on the basis of presumptive disability or presumptive blindness only "prior to the determination" of disability or blindness. Once we have made a formal determination, we no longer have the authority to pay benefits on the basis of presumptive disability or presumptive blindness.

Comment: We received numerous comments about the new check-block forms (SSA–4814 for adults and SSA–4815–F3 for children) we developed to assist in establishing medical source verification of HIV-related disease manifestations at listing-level severity. Although we received several favorable comments from the medical community, other commenters pointed out what they saw as problems with the forms, including a lack of instructions for the individuals who complete the forms, the additional time it might take them to complete and mail the forms back, and the confusion that can arise later when a State agency subsequently sends another form to obtain the information necessary to make a formal disability decision.

Response: Although these comments are more properly addressed to our operating procedures rather than the proposed rule, we agree with many of them. Therefore, we have developed instructions for completion of the forms and have revised the forms. For example, to minimize any confusion, we will include a cover sheet of instructions that explains how to complete the form and the purpose of the form. In doing so we will explain that, after the presumptive disability finding is made, the State agency completes the development of the evidence it needs for a formal determination which will require more detailed evidence from the medical source. We have also reemphasized in our operating instructions that Social Security Field Office employees have the flexibility to make direct contact with the medical source to verify listing-level severity. We think the multiple contact is worthwhile because it allows us to get the necessary information quickly to provide presumptive disability payments to those who may need them. In addition, the information on the check-block form will help the State agency pinpoint the kind of evidence it will need to obtain for the formal disability determination, which should expedite the determination. We also have prepared public information materials to eliminate any confusion that may have existed.

Comment: One commenter suggested that the new rule allow a presumptive disability finding if an individual presents medical documentation of a pattern of chronic health problems of 6 months or longer. The commenter thought that this would permit the individual the resources to access health care facilities to obtain the medical documentation needed for a formal disability determination.

Response: We did not adopt this comment. As we have already explained, because our Social Security Field Office employees generally are not medically trained, we believe it is appropriate to use listing-level conditions when making presumptive disability findings in the Social Security Field Office. Thus, when medical source information confirms that an individual has an impairment(s) that meets the severity of listing-level criteria for HIV because of persistent or recurrent health problems, such an individual can be found presumptively disabled at the Social Security Field Office. Moreover, a claimant with the type of chronic conditions described by the comment may be found presumptively disabled in the State agency if there is a high degree of probability that he or she is disabled, even though there is not yet sufficient evidence for a formal determination.

With regard to the comment that the presumptive disability finding would enable the person to have access to health care and secure documentation for the formal disability determination, we repeat that, when the evidence presented by the claimant is insufficient for us to determine whether he or she is disabled (or the claimant has no evidence to present), we purchase consultative examinations, at our expense, to obtain evidence on which to base a disability determination. As we have stated before, the purpose of findings of presumptive disability is not to develop evidence for those with no treatment records or to finally adjudicate claims. We expedite benefits to those claimants with HIV infection who do not have medical sources by flagging their files in the Social Security Field Office to alert State agency personnel that a consultative examination is needed. Thereafter, the State agency may make a finding of presumptive disability or a formal determination of disability at the earliest possible moment.

Comment: A commenter suggested that the presumptive disability rule should include a detailed recitation of the HIV presumptive disability criteria or should reference the Listing of Impairments in appendix 1 to subpart P of 20 CFR part 404.

Response: We have not adopted this comment. We did not adopt the comment asking us to repeat the HIV presumptive disability criteria because they are the same criteria as are in the listings; to include them in this rule would be redundant and cumbersome. Nor did we reference the Listing of Impairments. We did not include this reference because we believe to do so would limit our ability to promptly add additional manifestations of HIV to the check-block form which may be found to be of "listing-level" in the future. In doing so, we will be able to include manifestations that are of listing-level severity, and on which findings of presumptive disability may be based, expeditiously as new medical information emerges.

Comment: One commenter noted that we had separately published a final rule removing 20 CFR 416.934(k) at 56 FR 65682, December 18, 1991. The commenter objected to the publication of the final rule without the opportunity for public notice and comment and recommended that SSA continue to make presumptive disability findings based on a confirmed diagnosis of AIDS.

Response: The sunset date for § 416.934(k) was December 31, 1991. Therefore, this provision would have expired 2 weeks following the date of the publication in the **Federal Register** of the final rule to remove it. While we could have let the provision expire on December 31, 1991, we chose to alert the public by publishing a final rule removing the section and explaining our new presumptive disability procedures to include consideration of those individuals filing claims based on HIV infection, not just those individuals filing claims based on AIDS. As we have stated before, these new procedures allow us to identify individuals who can be found presumptively disabled at the earliest stage of the application process.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these revisions do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations contain a reporting requirement in § 416.933. However, we have obtained clearance from the Office of Management and Budget (OMB) to collect this information using forms SSA–4814 and SSA–4815–F3. Both forms have OMB number 0960–0057.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: March 4, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: April 29, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and bi.

2. Section 416.933 is revised to read as follows:

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time we make the presumptive disability or presumptive blindness finding reflects a high degree of probability that you are disabled or blind. In the case of readily observable impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind for purposes of this section without medical or other evidence. For other impairments, a finding of disability or blindness must be based on medical evidence or other information that, though not sufficient for a formal determination of disability or blindness, is sufficient for us to find that there is a high degree of probability that you are disabled or blind. For example, for claims involving the human immunodeficiency virus (HIV), the Social Security Field Office may make a finding of presumptive disability if your medical source provides us with information that confirms that your disease manifestations meet the severity of listing-level criteria for HIV. Of course, regardless of the specific HIV manifestations, the State agency may make a finding of presumptive disability

if the medical evidence or other information reflects a high degree of probability that you are disabled.

[FR Doc. 93–15123 Filed 7–1–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling (SSR) 91–8p, Titles II and XVI]

Evaluation of Human Immunodeficiency Virus Infection

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Ruling.

SUMMARY: The Principal Deputy Commissioner of Social Security gives notice of the rescission of SSR 91–8p, which updated the policy interpretation for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on this impairment under titles II and XVI of the Social Security Act.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 91–8p was published in the **Federal Register** on December 17, 1991 (56 FR 65498). This Ruling also was published in the 1990–1991 Cumulative Edition of the Rulings. SSR 91–8p updated the policy interpretation for evaluating human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), in determining disability based on these impairments under titles II and XVI of the Social Security Act.

Elsewhere in this edition of the **Federal Register**, we are publishing final regulations which, among other things, establish a new listing section called "Immune System" in part A and part B of the Listing of Impairments contained in appendix 1 of 20 CFR part 404, subpart P. The new listing section includes a listing for the evaluation of HIV infection. Because these final regulations are effective as of today, SSR 91–8p is now obsolete. Therefore, we are rescinding SSR 91–8p.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.807 Supplemental Security Income)

Dated: May 5, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Certified To Be A True Copy of the Original.

Martin Sussman,

(Alternate), Division of Regulations, SSA.

[FR Doc. 93–15122 Filed 7–1–93; 8:45 am]

BILLING CODE 4190–29–P

federal register

Friday
July 2, 1993

Part III

Office of Management and Budget

Federal Information Resources Management (Circular A–130), Revision; Notice

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of OMB Circular No. A–130.

SUMMARY: The Office of Management and Budget (OMB) is revising Circular No. A–130, Management of Federal Information Resources. This notice revises those portions of the circular concerning information management policy, including policies relating to information dissemination, records management, and cooperation with State and local governments. This Circular supersedes OMB Circular Nos. A–3 and A–114.

DATE: This Circular is effective June 25, 1993.

ELECTRONIC AVAILABILITY: This document is available on the Internet via anonymous File Transfer Protocol (FTP) from *nis.nsf.net* as */omb/omb.a130.rev2* (do not use any capital letters in the file name). For those who do not have FTP capability, the document can also be retrieved via mail query by sending an electronic mail message to *nis-info@nis.nsf.net* with no subject, and with *send omb.a130.rev2* as the first line of the body of the message. For assistance using FTP, mail query, or electronic mail, please contact your system administrator.

FOR FURTHER INFORMATION CONTACT: Peter N. Weiss, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) assigns the Director of OMB responsibility for maintaining a comprehensive set of information resources management (IRM) policies and for promoting the application of information technology to improve the use and dissemination of information by Federal agencies.

To fulfill these responsibilities, OMB issued Circular No. A–130, Management of Federal Information Resources (50 FR 52730; December 24, 1985), which provided a policy framework for the management of Federal information resources. Since the Circular was issued in 1985, Federal agencies have introduced major new information programs involving the electronic collection and dissemination of information. Congress has also enacted several laws bearing on the Circular, especially amendments to the PRA (Public Law 99–500), the Computer Security Act of 1987 (Public Law 100–235), the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503), and the Computer Matching and Privacy Protection Amendments of 1990 (Public Law 101–508). Since publication of the Circular, OMB has addressed the need for additional guidance in several notices:

(1) Notice of Policy Guidance on Electronic Collection of Information (52 FR 29454; August 7, 1987);

(2) Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214; January 4, 1989);

(3) Second Advance Notice of Further Policy Development on Dissemination of Information (54 FR 25554; June 15, 1989);

(4) Advance Notice of Plans for Revision of OMB Circular No. A–130 (56 FR 9026; March 4, 1991);

(5) Proposed Revision of OMB Circular No. A–130 (57 FR 18296; April 29, 1992).

Also, consistent with the October 1, 1991, Notice of Rescission of OMB Circulars (56 FR 49824), OMB is incorporating into Circular No. A–130 certain provisions of existing Circular No. A–3, Government Publications, and of Circular No. A–114, Management of Federal Audiovisual Activities. As of the effective date of these revisions, Circular Nos. A–3 and A–114 are rescinded.

The purpose of the revision is to bring into proper perspective the following key areas that were not sufficiently emphasized in the original circular:

(1) IRM planning, with special focus on the information life cycle.

(2) The role of State and local governments in the management of information resources, and the need for Federal agencies to consider the effects of their information activities on those governments.

(3) Records management, with a special focus on the need to properly manage electronic records.

(4) Electronic collection and dissemination of information, identifying those conditions where agencies should consider using electronic techniques in order to reduce costs or provide better services.

(5) Information dissemination policy, stating the basic responsibility of all agencies to disseminate information consistent with their missions, and laying out the structure and substance of agency dissemination management programs.

Structure of this Revision

This revision affects primarily Section 6 of the Circular, Definitions; Section 7, Basic Considerations and Assumptions; Section 8a, Information Management Policy, and Appendix IV, Analysis of Key Sections. Minor changes are made in other sections. The structural outline of the Circular, together with notations as to which parts are changed, is presented below.

Outline of OMB Circular No. A–130 [as Revised]:

1. *Purpose:* [Unchanged]
2. *Rescissions:* [Rescinds Circular No. A–3, Government Publications, and Circular No. A–114, Management of Federal Audiovisual Activities.]
3. *Authorities:* [Cites additional statutory authorities for the Circular.]
4. *Applicability and Scope;* [Unchanged]
5. *Background:* [Unchanged]
6. *Definitions:* [Changed]
7. *Basic Considerations and Assumptions:* [Changed]
8. *Policies:*

a. *Information Management Policy:* [Changed]

b. *Information Systems and Information Technology Management:* [Unchanged]

9. *Assignment of Responsibilities:* [Changed]
10. *Oversight:* [Changed]
11. *Effective Date:* [Changed]
12. *Inquiries:* [Unchanged]
13. *Sunset Review Date:* [Changed]

Appendix I: *Federal Agency Responsibilities for Maintaining Records about Individuals* [Changed]

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities* [Unchanged]

Appendix III: *Security of Federal Automated Information Systems* [Unchanged]

Appendix IV: *Analysis of Key Sections* [Changes reflecting revisions to policy.]

The revised portions are printed in their entirety.

Summary of Revisions

Section 3. *Authorities.* This notice adds a reference to the Computer Security Act of 1987 and the Chief Financial Officers Act of 1990.

Section 6. *Definitions.* OMB defines the terms "record" and "records management" as set forth at 44 U.S.C. 3301 and 44 U.S.C. 2901(2) respectively

because the newly proposed policy explicitly covers records management, and defines the terms "information life cycle" and "information dissemination product" because policy statements regarding records management and information dissemination use the terms. The term "audiovisual production" is defined in order to incorporate policy presently contained in Circular No. A–114. The revision modifies the definition of the term "information" for clarity. The term "government information" is expanded to include information created, collected, processed, disseminated, or disposed of by "or for" the Federal Government. The term "access to information" is deleted because its use has caused confusion.

Section 7. *Basic Considerations and Assumptions.* Aside from minor stylistic changes and renumbering, the revisions are as follows:

Subsection 7d revises a statement, taken from the public notice of June 15, 1989, to recognize that the benefits to be derived from government information may not always be quantifiable.

Subsection 7e in the current Circular is deleted; the intended meaning is adequately stated in OMB Circular No. A–76.

Subsection 7i is a new statement emphasizing the need for strategic planning in the management of information resources.

Subsection 7j is a new statement stressing the need for Federal Government cooperation with State and local governments in the management of information resources.

Subsection 7l is a revision of the present 7f adding a statement about the potential benefits of electronic dissemination of information.

Section 8a. *Information Management Policy.* The section begins with a set of policy statements concerning IRM planning with special emphasis on the information life cycle. Both in the planning statements and elsewhere, are new policy statements concerning the role of State and local governments and concerning records management. Also included are new policy statements regarding electronic collection and dissemination of information. The information dissemination policy statements are the most extensively revised, incorporating the concepts set forth in the June 15, 1989, notice (54 FR 25554).

Section 8a(1). *Information Management Planning.* This policy is new. However, Section 8a(1)(d), pertaining to acquiring information through sharing from existing sources, is incorporated from the existing Circular at 8a(2).

Section 8a(2) and (3). *Information Collection.* Section 8a(2) states the applicable information collection principles derived primarily from PRA. Section 8a(3) sets forth a new policy concerning situations under which electronic information collection is appropriate. These statements revise those proposed in the August 7, 1987, notice (52 FR 29454).

Section 8a(4). *Records Management.* Section 8a(4) sets forth basic policy regarding records management.

Sections 8a(5) and 8a(6). *Information Dissemination Policy.* The notice of June 15, 1989, set forth certain conclusions about the proper role for executive branch agencies in government information dissemination and the boundaries between Federal and nonfederal roles. OMB has used these conclusions as a starting point for revising information dissemination policy.

Section 8a(5) states the basic responsibility of all agencies to provide information to the public consistent with their missions. It also sets forth guidance on how agencies should go about disseminating information.

Section 8a(6) is a new policy that agencies maintain an information dissemination management system to ensure the routine performance of certain dissemination functions. The system and its functions are new provisions; however, they set in place some requirements originally contained in OMB Bulletins 88–14, 89–15, 90–09, and 91–16. Finally, this section incorporates certain requirements from Circular No. A–3, Government Publications, which is rescinded.

Section 8a(7). *Avoiding Improperly Restrictive Practices.* Section 8a(7) states a new policy concerning agency control over information that it intends to disseminate. This section also states policy regarding user charges for information dissemination products.

Section 8a(8). *Electronic Information Dissemination.* New section 8a(8) sets forth policy about when agencies should consider disseminating information in electronic format. This section parallels Section 8a(3) concerning electronic information collection.

Section 8a(9). *Information Safeguards.* Section 8a(9) incorporates policy statements found in the existing Circular at 8a(3) through (6).

Section 9. *Assignment of Responsibilities.* New section 9(a)(10) carries over the requirement in Circular No. A–114 that the head of each agency designate an office with responsibility for management oversight of agency audiovisual productions, facilities and activities. Section 9(a)(11) adds a requirement that the agency designated IRM official monitor agency compliance with the policies contained in the Circular and act as an ombudsman to consider alleged instances of agency failure to comply.

Appendix I: *Federal Agency Responsibilities for Maintaining Records About Individuals.* Changes to agency responsibilities resulting from recent enactments of privacy legislation have previously been issued in OMB guidance, and are incorporated into Appendix I.

Appendix IV: *Analysis of Key Sections.* This appendix is completely revised and provides a general context and explanation of the contents of the key Sections of the Circular. It explains the changes made to the original Circular by this notice, and reflects OMB's consideration and resolution of the comments received in response to the revisions proposed on April 29, 1992 (57 FR 18296).

Plans for Development of Other Topics

The second phase of revisions to Circular No. A–130, which is being published separately, will address the following areas:

Section 8b. *Information Systems and Information Technology Management.* The revisions to Section 8b of the circular will focus on strategic IRM planning and analysis of proposed investments in information technology. The Circular will state policy principles to guide agency planning and explain OMB's expectations when reviewing agency budget requests for investments in information technology. OMB intends to make more explicit the policy connections between A–130 and OMB policy documents including Circular Nos. A–109, A–123 and A–127, with the goal of avoiding unnecessary overlap and harmonizing definitions among all four. It will link the management of information technology to agency strategic planning, stress incorporating user needs when preparing requirements analyses, and suggest policy level control and review mechanisms for IRM policies and life cycle management of projects.

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities.* OMB will revise Appendix II to reflect changes in law made by the Chief Financial Officers Act and the Budget Enforcement Act of 1990. These requirements include ensuring that accounting and reimbursements for sharing of information technology facilities are monitored and approved.

The revision will also address the use of revolving funds for cost recovery and accounting for inter-agency and intra-agency reimbursements. In addition, the revision will address the budgetary scoring of capital leases and lease-to-purchase agreements for information technology.

Appendix III: *Security of Federal Automated Information Systems.* OMB will revise Appendix III to incorporate requirements of the Computer Security Act of 1987, including requirements for security plans described in OMB Bulletin 90–08. Those revisions will incorporate changes based on the experience gained in recent computer security visits to major agencies. OMB will also work with the National Institute of Standards and Technology to implement recommendations of the Computer Security and Privacy Advisory Board (established by the Computer Security Act) regarding better coordination between this Circular and OMB Circular No. A–123.

Accordingly, Circular No. A–130 is revised as set forth below.

Sally Katzen,

Administrator,

Office of Information and Regulatory Affairs.

Circular No. A–130—Revised

Transmittal Memorandum No. 1

To the Heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources.

Circular No. A–130 provides uniform government-wide information resources management policies as required by the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. This Transmittal Memorandum contains updated guidance on those portions of the Circular dealing with information resources management planning, records management and information dissemination policy. It also contains a revised Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals," and a revised Appendix IV, "Analysis of Key Sections."

This Circular replaces and rescinds OMB Circular No. A–3, "Government Publications," dated May 2, 1985, and OMB Circular No. A–114, "Management of Federal Audiovisual Activities," dated March 20, 1985.

Leon E. Panetta,

Director.

Circular No. A–130—Revised

Transmittal Memorandum No. 1

Memorandum for Heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources.

1. *Purpose:* This Circular establishes policy for the management of Federal information resources. Procedural and analytic guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions:* This Circular rescinds OMB Circulars No.A–3, A–71, A–90, A–108, A–114, and A–121, and all Transmittal Memoranda to those circulars.

3. *Authorities:* This Circular is issued pursuant to the Paperwork Reduction Act (PRA), as amended (44 U.S.C. Chapter 35); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 et seq.); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 759 and 487); the Computer Security Act (40 U.S.C. 759 note); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); Executive Order No. 12046 of March 27, 1978; and Executive Order No. 12472 of April 3, 1984.

4. *Applicability and Scope:*

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal Government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives. National security emergency preparedness activities should be conducted in accordance with Executive Order No. 12472.

5. *Background:* The Paperwork Reduction Act establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of OMB develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions:*

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Within the Executive Office of the President, the term includes only OMB and the Office of Administration.

b. The term "audiovisual production" means a unified presentation, developed according to a plan or script, containing visual imagery, sound or both, and used to convey information.

c. The term "dissemination" means the government initiated distribution of information to the public. Not considered dissemination within the meaning of this Circular is distribution limited to government employees or agency contractors or grantees, intra- or inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or Privacy Act.

d. The term "government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

e. The term "government publication" means information which is published as an individual document at government expense, or as required by law. (44 U.S.C. 1901)

f. The term "information" means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

g. The term "information dissemination product" means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, disseminated by an agency to the public.

h. The term "information life cycle" means the stages through which information passes, typically characterized as creation or collection, processing, dissemination, use, storage, and disposition.

i. The term "information resources management" means the planning, budgeting, organizing, directing, training, and administrative control associated with government information resources. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and information technology.

j. The term "information system" means the organized collection, processing, maintenance, transmission, and dissemination of information in

accordance with defined procedures, whether automated or manual.

k. The term "information technology" means the hardware and software operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information on behalf of the Federal Government to accomplish a Federal function, regardless of the technology involved, whether computers, telecommunications, or others. It includes automatic data processing equipment as that term is defined in Section 111(a)(2) of the Federal Property and Administrative Services Act of 1949. For the purposes of this Circular, automatic data processing and telecommunications activities related to certain critical national security missions, as defined in 44 U.S.C. 3502(2) and 10 U.S.C. 2315, are excluded.

l. The term "information technology facility" means an organized grouping of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology.

m. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating, or maintenance costs; or its significant impact on the administration of agency programs, finances, property, or other resources.

n. The term "records" means all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included. (44 U.S.C. 3301)

o. The term "records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations. (44 U.S.C. 2901(2))

7. *Basic Considerations and Assumptions:*

a. The Federal Government is the largest single producer, collector, consumer, and disseminator of information in the United States. Because of the extent of the government's information activities, and the dependence of those activities upon public cooperation, the management of Federal information resources is an issue of continuing importance to all Federal agencies, State and local governments, and the public.

b. Government information is a valuable national resource. It provides the public with knowledge of the government, society, and economy—past, present, and future. It is a means to ensure the accountability of government, to manage the government's operations, to maintain the healthy performance of the economy, and is itself a commodity in the marketplace.

c. The free flow of information between the government and the public is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, and maximize the usefulness of government information.

d. In order to minimize the cost and maximize the usefulness of government information, the expected public and private benefits derived from government information should exceed the public and private costs of the information, recognizing that the benefits to be derived from government information may not always be quantifiable.

e. The nation can benefit from government information disseminated both by Federal agencies and by diverse nonfederal parties, including State and local government agencies, educational and other not-for-profit institutions, and for-profit organizations.

f. Because the public disclosure of government information is essential to the operation of a democracy, management of Federal information resources should protect the public's right of access to government information.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. Systematic attention to the management of government records is an essential component of sound public resources management which ensures public accountability. Together with records preservation, it protects the government's historical record and guards the legal and financial rights of the government and the public.

i. Strategic planning is basic to the operation of sound government programs. This planning ensures that the management of information resources reflects agency strategic priorities within budgetary limitations.

j. Because State and local governments are important producers of government information for many areas such as health, social welfare, labor, transportation, and education, the Federal Government must cooperate with these governments in the management of information resources.

k. The open and efficient exchange of scientific and technical government information, subject to applicable national security controls and the proprietary rights of others, fosters excellence in scientific research and effective use of Federal research and development funds.

l. Modern information technology presents opportunities to improve the management of government programs to provide better service to the public. The availability of government information in diverse media, including electronic formats, permits the public greater flexibility in using the information.

m. Federal Government information resources management policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policy*—a. *Information Management Policy*

(1) *Information Management Planning.* Agencies shall plan in an integrated manner for managing information throughout its life cycle. Agencies shall:

(a) Consider, at each stage of the information life cycle, the effects of decisions and actions on other stages of the life cycle, particularly those concerning information dissemination;

(b) Consider the effects of their actions on members of the public and ensure consultation with the public as appropriate;

(c) Consider the effects of their actions on State and local governments and ensure consultation with those governments as appropriate;

(d) Seek to satisfy new information needs through interagency or intergovernmental sharing of information, or through commercial

sources, where appropriate, before creating or collecting new information;

(e) Integrate planning for information systems with plans for resource allocation and use, including budgeting, acquisition, and use of information technology;

(f) Train personnel in skills appropriate to management of information;

(g) Protect government information commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information;

(h) Use voluntary standards and Federal Information Processing Standards where appropriate or required;

(i) Consider the effects of their actions on the privacy rights of individuals, and ensure that appropriate legal and technical safeguards are implemented;

(j) Record, preserve, and make accessible sufficient information to ensure the management and accountability of agency programs, and to protect the legal and financial rights of the Federal Government;

(k) Incorporate records management and archival functions into the design, development, and implementation of information systems;

(l) Provide for public access to records where required or appropriate.

(2) *Information Collection.* Agencies shall collect or create only that information necessary for the proper performance of agency functions and which has practical utility.

(3) *Electronic Information Collection.* Agencies shall use electronic collection techniques where such techniques reduce burden on the public, increase efficiency of government programs, reduce costs to the government and the public, and/or provide better service to the public. Conditions favorable to electronic collection include:

(a) The information collection seeks a large volume of data and/or reaches a large proportion of the public;

(b) The information collection recurs frequently;

(c) The structure, format, and/or definition of the information sought by the information collection does not change significantly over several years;

(d) The agency routinely converts the information collected to electronic format;

(e) A substantial number of the affected public are known to have ready access to the necessary information technology and to maintain the information in electronic form;

(f) Conversion to electronic reporting, if mandatory, will not impose substantial costs or other adverse effects on the public, especially State and local governments and small business entities.

(4) *Records Management.* Agencies shall:

(a) Ensure that records management programs provide adequate and proper documentation of agency activities;

(b) Ensure the ability to access records regardless of form or medium;

(c) In a timely fashion, establish, and obtain the approval of the Archivist of the United States for, retention schedules for Federal records; and

(d) Provide training and guidance as appropriate to all agency officials and employees and contractors regarding their Federal records management responsibilities.

(5) *Providing Information to the Public.* Agencies have a responsibility to provide information to the public consistent with their missions. Agencies shall discharge this responsibility by:

(a) Providing information, as required by law, describing agency organization, activities, programs, meetings, systems of records, and other information holdings, and how the public may gain access to agency information resources;

(b) Providing access to agency records under provisions of the Freedom of Information Act and the Privacy Act, subject to the protections and limitations provided for in these Acts;

(c) Providing such other information as is necessary or appropriate for the proper performance of agency functions; and

(d) In determining whether and how to disseminate information to the public, agencies shall:

(i) Disseminate information in a manner that achieves the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public;

(ii) Disseminate information dissemination products on equitable and timely terms;

(iii) Take advantage of all dissemination channels, Federal and nonfederal, including State and local governments, libraries and private sector entities, in discharging agency information dissemination responsibilities;

(iv) Help the public locate government information maintained by or for the agency.

(6) *Information Dissemination Management System.* Agencies shall maintain and implement a management system for all information dissemination products which shall, at a minimum:

(a) Assure that information dissemination products are necessary for proper performance of agency functions (44 U.S.C. 1108);

(b) Consider whether an information dissemination product available from other Federal or nonfederal sources is equivalent to an agency information dissemination product and reasonably fulfills the dissemination responsibilities of the agency;

(c) Establish and maintain inventories of all agency information dissemination products;

(d) Develop such other aids to locating agency information dissemination products including catalogs and directories, as may reasonably achieve agency information dissemination objectives;

(e) Identify in information dissemination products the source of the information, if from another agency;

(f) Ensure that members of the public with disabilities whom the agency has a responsibility to inform have a reasonable ability to access the information dissemination products;

(g) Ensure that government publications are made available to depository libraries through the facilities of the Government Printing Office, as required by law (44 U.S.C. Part 19);

(h) Provide electronic information dissemination products to the Government Printing Office for distribution to depository libraries;

(i) Establish and maintain communications with members of the public and with State and local governments so that the agency creates information dissemination products that meet their respective needs;

(j) Provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

(k) Ensure that, to the extent existing information dissemination policies or practices are inconsistent with the requirements of this Circular, a prompt and orderly transition to compliance with the requirements of this Circular is made.

(7) *Avoiding Improperly Restrictive Practices.* Agencies shall:

(a) Avoid establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis;

(b) Avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and,

(c) Set user charges for information dissemination products at a level sufficient to recover the cost of dissemination but no higher. They shall exclude from calculation of the charges costs associated with original collection and processing of the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects, processes, and disseminates the information for the benefit of a specific identifiable group beyond the benefit to the general public;

(iii) Where the agency plans to establish user charges at less than cost of dissemination because of a determination that higher charges would constitute a significant barrier to properly performing the agency's functions, including reaching members of the public whom the agency has a responsibility to inform; or

(iv)Where the Director of OMB determines an exception is warranted.

(8) *Electronic Information Dissemination.* Agencies shall use electronic media and formats, including public networks, as appropriate and within budgetary constraints, in order to make government information more easily accessible and useful to the public. The use of electronic media and formats for information dissemination is appropriate under the following conditions:

(a) The agency develops and maintains the information electronically;

(b) Electronic media or formats are practical and cost effective ways to provide public access to a large, highly detailed volume of information;

(c) The agency disseminates the product frequently;

(d) The agency knows a substantial portion of users have ready access to the necessary information technology and training to use electronic information dissemination products;

(e) A change to electronic dissemination, as the sole means of disseminating the product, will not impose substantial acquisition or training costs on users, especially State and local governments and small business entities.

(9) *Safeguards.* Agencies shall:

(a) Ensure that information is protected commensurate with the risk and magnitude of the harm that would result from the loss, misuse, or unauthorized access to or modification of such information;

(b) Limit the collection of information which identifies individuals to that which is legally authorized and necessary for the proper performance of agency functions;

(c) Limit the sharing of information that identifies individuals or contains proprietary information to that which is legally authorized, and impose appropriate conditions on use where a continuing obligation to ensure the confidentiality of the information exists;

(d) Provide individuals, upon request, access to records about them maintained in Privacy Act systems of records, and permit them to amend such records as are in error consistent with the provisions of the Privacy Act.

b. *Information Systems and Information Technology Management.* [This Section is unaffected by this revision. *See* 50 FR 52730 (December 24, 1985).]

9. *Assignment of Responsibilities*—a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Create, maintain, and dispose of a record of agency activities in accordance with the Federal Records Act of 1950, as amended;

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the PRA including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, as required by 44 U.S.C. 3506(b), who shall report directly to the agency head to carry out the responsibilities of the agency under the PRA. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official.

(10) Designate an office with responsibility for management oversight of agency audiovisual productions and establish an appropriate program for the management of audiovisual productions, facilities, and activities in conformance with the requirements contained at 36 CFR 1232.4.

(11) Direct the senior official appointed pursuant to 44 U.S.C. 3506(b) to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the senior official shall consider alleged instances of agency failure to comply with this Circular and recommend or take corrective action as appropriate. The senior official shall report annually, not later than February 1st of each year, to the Director those instances of alleged failure to comply with this Circular and their resolution.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal Government information activities and ensure that such positions and policies are consistent with Federal information resources management policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition management security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal tele-communications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal tele-communications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director of OMB, plans, policies, and programs relating to international telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Secretary of Defense and the Administrator of General Services, to ensure efficient application of such technology;

(7) Ensure that the Federal Government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *Department of Defense.* The Secretary of Defense shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

e. *General Services Administration.* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies, as authorized by law, on the acquisition, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as required by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the PRA and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management including end-user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget shall:

(1) Provide overall leadership and coordination of Federal information resources management within the executive branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined by 5 CFR 1320.7;

(6) Develop and publish annually in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal Government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the PRA;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to Section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. Government Position and Policy statements on international issues affecting Federal Government information activities and advise the Secretary of State as to their consistency with Federal information resources management policy.

10. *Oversight:*

a. The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management measures, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

b. The Director, OMB, may, upon written request of an agency, grant a waiver from particular requirements of this Circular. Requests for waivers must detail the reasons why a particular waiver is sought, identify the duration of the waiver sought, and include a plan for the prompt and orderly transition to full compliance with the requirements of this Circular. Notice of each waiver request shall be published promptly by the agency in the **Federal Register**, with a copy of the waiver request made available to the public on request.

11. *Effectiveness:* This Circular is effective upon issuance. Nothing in this Circular shall be construed to confer a private right of action on any person.

12. *Inquiries:* All questions or inquiries should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–4814.

13. *Sunset Review Date:* OMB will review this Circular three years from the date of issuance to ascertain its effectiveness.

Appendix I to OMB Circular No. A–130

Federal Agency Responsibilities for Maintaining Records About Individuals

1. *Purpose and Scope.* This Appendix describes agency responsibilities for implementing the reporting and publication requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. Note that this Appendix does not rescind other guidance OMB has issued to help agencies interpret the Privacy Act's provisions, e.g., Privacy Act Guidelines (40 FR 28949–28978, July 9, 1975), or Final Guidance for Conducting Matching Programs (54 FR at 25819, June 19, 1989).

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this Appendix, are defined in the Act (5 U.S.C. 552a(a)).

b. *Matching Agency.* Generally, the Recipient Federal agency (or the Federal source agency in a match conducted by a nonfederal agency) is the matching agency and is responsible for meeting the reporting and publication requirements associated with the matching program. However, in large, multi-agency matching programs, where the recipient agency is merely performing the matches and the benefit accrues to the source agencies, the partners should assign responsibility for compliance with the administrative requirements in a fair and reasonable way. This may mean having the matching agency carry out these requirements for all parties, having one participant designated to do so, or having each source agency do so for its own matching program(s).

c. *Nonfederal Agency.* Nonfederal agencies are State or local governmental agencies receiving records from a Federal agency's automated system of records to be used in a matching program.

d. *Recipient Agency.* Recipient agencies are Federal agencies or their contractors receiving automated records from the Privacy Act systems of records of other Federal agencies, or from State or local governments, to be used in a matching program as defined in the Act.

e. *Source Agency.* A source agency is a Federal agency that discloses automated records from a system of records to another Federal agency or to a State or local agency to be used in a matching program. It is also a State or local agency that discloses records to a Federal agency for use in a matching program.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act and the specific reporting and publication requirements detailed in this Appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every two years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act binding on the contractor and his or her employees. (*See* 5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annually agency recordkeeping and disposal policies and practices in order to assure compliance with the Act, paying particular attention to the maintenance of automated records.

(3) *Routine Use Disclosures.* Review every four years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency collected the information.

(4) *Exemption of Systems of Records.* Review every four years each system of records for which the agency has promulgated exemption rules pursuant to Section (j) or (k) of the Act in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB guidance, and any agency regulations, operating instructions, or guidelines have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements of their specific jobs.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrence of the problem.

(8) *Systems of Records Notices.* Review annually each system of records notice to ensure that it accurately describes the system of records. Where minor changes are needed, e.g., the name of the system manager, ensure that an amended notice is published in the **Federal Register.** Agencies may choose to make one annual comprehensive publication consolidating such minor changes. This requirement is distinguished from and in addition to the requirement to report to OMB and Congress significant changes to systems of records and to publish those changes in the **Federal Register** (See paragraph 4c of this Appendix).

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for ensuring the security of information protected by the Act in automated information systems.

c. *The Department of Defense, General Services Administration, and National Aeronautics and Space Administration.* These agencies shall, consistent with guidelines issued by the Director, OMB, ensure that instructions are issued on what agencies must do in order to comply with the requirements of Section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain governmentwide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct Privacy Act training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States through the Office of the

Federal Register, shall, consistent with guidelines issued by the Director, OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Act.

(2) Compile and publish every two years, the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public at low cost.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review new and altered system of records and matching program reports submitted pursuant to Section (o) of the Act.

(4) Compile the biennial report of the President to Congress in accordance with Section (s) of the Act.

(5) Compile and issue a biennial report on the agencies' implementation of the computer matching provisions of the Privacy Act, pursuant to Section (u)(6) of the Act.

4. *Reporting Requirements.* (See Table 1 at the end of this Appendix for due dates and recipient addresses.)

a. *Biennial Privacy Act Report.* To provide the necessary information for the biennial report of the President, agencies shall submit a biennial report to OMB, covering their Privacy Act activities for the calendar years covered by the reporting period. The exact format of the report will be established by OMB. At a minimum, however, agencies should collect and be prepared to report the following data on a calendar year basis:

(1) A listing of publication activity during each year showing the following:

* Total Number of Systems of Records (Exempt/NonExempt)
* Number of New Systems of Records Added (Exempt/NonExempt)
* Number Routine Uses Added
* Number Exemptions Added to Existing Systems
* Number Exemptions Deleted from Existing Systems
* Total Number of Automated Systems of Records (Exempt/NonExempt)

The agency should provide a brief narrative describing those activities in detail, e.g., "the Department added a (k)(1) exemption to an existing system of records entitled "Investigative Records of the Office of Investigations;" or "the agency added a new routine use to a system of records entitled "Employee Health Records" that would permit disclosure of health data to researchers under contract to the agency to perform workplace risk analysis."

(2) A brief description of any public comments received on agency publication and implementation activities, and agency response.

(3) Number of access and amendment requests from record subjects citing the Privacy Act that were received during the calendar year of the report. Also the disposition of requests from any year that were completed during the calendar year of the report:

* *Total Number of Access Requests*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
  Number For Which No Record Found
* *Total Amendment Requests*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
* *Number of Appeals of Denials of Access*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied
  Number For Which No Record Found
* *Number of Appeals of Denials of Amendment*
  Number Granted in Whole
  Number Granted in Part
  Number Wholly Denied

(4) Number of instances in which individuals brought suit under section (g) of the Privacy Act against the agency and the results of any such litigation that resulted in a change to agency practices or affected guidance issued by OMB.

(5) Results of any reviews undertaken in response to paragraph 3a of this Appendix.

(6) Description of agency Privacy Act training activities conducted in accordance with paragraph 3a(6) of this Appendix.

b. *Biennial Matching Activity Report.* (*See* 5 U.S.C. 552a(u)(3)(D)). At the end of each calendar year, the Data Integrity Board of each agency that has participated in matches covered by the computer matching provisions of the Privacy Act will collect data summarizing that year's matching activity. The Act requires that such activity be reported every two years. OMB will establish the exact format of the report, but agencies' Data Integrity Boards should be prepared to report the data identified below both to the agency head and to OMB.

(1) A listing of the names and positions of the members of the Data Integrity Board and showing separately the name of the Board Secretary, his or her agency mailing address, and telephone number. Also show and explain any changes in membership or structure occurring during the reporting year.

(2) A listing of each matching program, by title and purpose, in which the agency participated during the reporting year. This listing should show names of participant agencies, give a brief description of the program, and give a citation including the date to the **Federal Register** notice describing the program.

(3) For each matching program, an indication of whether the cost/benefit analysis performed resulted in a favorable ratio. The Data Integrity Board should explain why the agency proceeded with any matching program for which an unfavorable ratio was reached.

(4) For each program for which the Board waived a cost/benefit analysis, reasons for the waiver and the results of match, if tabulated.

(5) A description of each matching agreement the Board rejected and an explanation of why it was rejected.

(6) A listing of any violations of matching agreements that have been alleged or identified, and a discussion of any action taken.

(7) A discussion of any litigation involving the agency's participation in any matching program.

(8) For any litigation based on allegations of inaccurate records, an explanation of the steps the agency used to ensure the integrity of its data as well as the verification process it used in the matching program, including an assessment of the adequacy of each.

c. *New and Altered System of Records Report.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems of records, and to submit reports to OMB, and to the Chair of the Committee on Government Operations of the House of Representatives, and the Chair of the Committee on Governmental Affairs of the Senate. The reports must be transmitted at least 40 days prior to the operation of the new system of records or the date on which the alteration to an existing system takes place.

(1) *When to Report Altered Systems of Records.* Minor changes to systems of records need not be reported. For example, a change in the designation of

the system manager due to a reorganization would not require a report, so long as an individual's ability to gain access to his or her records is not affected. Other examples include changing applicable safeguards as a result of a risk analysis, or deleting a routine use when there is no longer a need for the disclosure. The following changes are those for which a report is required:

(a) A significant increase in the number of individuals about whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a file covering physicians that has been expanded to include other types of healthcare providers, e.g., nurses, technicians, etc., would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the system of records. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption pursuant to Section (j) or (k) of the Act. Note that, in examining a rulemaking for a Privacy Act exemption as part of a report of a new or altered system of records, OMB will also review the rule under applicable regulatory review procedures and agencies need not make a separate submission for that purpose.

(f) The addition of a routine use pursuant to 5 U.S.C. 552a(b)(3).

(2) *Reporting Changes to Multiple Systems of Records.* When an agency makes a change to an information technology installation or a telecommunication network, or makes any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single, consolidated report, with changes to existing notices and supporting documentation included in the submission.

(3) *Contents of the New or Altered System Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system of records. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency or governmentwide systems of records. The letter sent to OMB may also include requests for waiver of the time period for the review. The agency should indicate why it cannot meet the established review period and what will be the consequences of not obtaining the waiver, (see paragraph 4e below).

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

1. Describe the purpose for which the agency is establishing the system of records.

2. Identify the authority under which the system of records is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as necessary.

3. Provide the agency's evaluation of the probable or potential effect of the proposal on the privacy of individuals.

4. Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

5. Explain how each proposed routine use satisfies the compatibility requirement of subsection (a)(7) of the Act. For altered systems, this requirement pertains only to any newly proposed routine use.

6. Provide OMB Control Numbers, expiration dates, and titles of any OMB approved information collection requests (e.g., forms, surveys, etc.) contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(c) *Supporting Documentation.* Attach the following to all new or altered system of records reports:

1. A copy of the new or altered system of records notice in **Federal Register** format, consistent with the provisions of 5 U.S.C. 552a(e)(4). For proposed altered systems the agency should supply a copy of the original system of records notice to ensure that reviewers can understand the changes proposed.

2. A copy in **Federal Register** format of any new exemption rules or changes to published rules (consistent with the provisions of 5 U.S.C. 552e(f),(j), or (k)) that the agency proposes to issue for the new or altered system.

(4) *OMB Concurrence.* Agencies may assume that OMB concurs in the Privacy Act aspects of their proposal if OMB has not commented within 40 days from the date the transmittal letter was signed. Agencies should ensure that letters are transmitted expeditiously after they are signed. Agencies may publish system of records and routine use notices as well as proposed exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and Congress. The period for OMB and congressional review and the notice and comment period for routine uses and exemptions will then run concurrently. Note that exemptions must be published as final rules before they are effective.

d. *New or Altered Matching Program Report.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered matching programs, and to submit reports to OMB, and to Congress. The report must be received at least 40 days prior to the initiation of any matching activity carried out under a new or substantially altered matching program. For renewals of continuing programs, the report must be dated at least 40 days prior to the expiration of any existing matching agreement.

(1) *When to Report Altered Matching Programs.* Agencies need not report minor changes to matching programs. The term "minor change to a matching program" means a change that does not significantly alter the terms of the agreement under which the program is being carried out. Examples of significant changes include:

(a) Changing the purpose for which the program was established.

(b) Changing the matching population, either by including new categories of record subjects or by

greatly increasing the numbers of records matched.

(c) Changing the legal authority covering the matching program.

(d) Changing the source or recipient agencies involved in the matching program.

(2) *Contents of New or Altered Matching Program Report.* The report for a new or altered matching program has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Privacy Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the matching program. The letter should state that a copy of the matching agreement has been distributed to Congress as the Act requires. The letter to OMB may also include a request for waiver of the review time period.

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should provide:

1. A description of the purpose of the matching program and the authority under which it is being carried out.

2. A description of the security safeguards used to protect against any unauthorized access or disclosure of records used in the match.

3. If the cost/benefit analysis required by Section (u)(4)(A) indicated an unfavorable ratio or was waived pursuant to OMB guidance, an explanation of the basis on which the agency justifies conducting the match.

(c) *Supporting Documentation.* Attach the following:

1. A copy of the **Federal Register** notice describing the matching program.

2. For the Congressional report only, a copy of the matching agreement.

(3) *OMB Concurrence.* Agencies may assume that OMB concurs in the Privacy Act aspects of their proposal if OMB has not commented within 40 days from the date the transmittal letter was signed. Agencies should ensure that letters are transmitted expeditiously after they are signed. Agencies may publish matching program notices in the **Federal Register** at the same time that they send the matching program report to OMB and Congress. The period for OMB and congressional review and the notice and comment period will then run concurrently.

e. *Expediting the Review Process.* The Director, OMB, may grant a waiver of the 40-day review period for either systems of records or matching program reviews. The agency must ask for the waiver in the transmittal letter and demonstrate compelling reasons. When a waiver is granted, the agency is not thereby relieved of any other requirement of the Act. If no waiver is granted, agencies may presume concurrence at the expiration of the 40 day review period. Note that OMB cannot waive time periods specifically established by the Act such as the 30 days notice and comment period required for the adoption of a routine use proposal pursuant to Section (b)(3) of the Act.

5. *Publication Requirements.* The Privacy Act requires agencies to publish notices or rules in the **Federal Register** in the following circumstances: when adopting a new or altered system of records, when adopting a routine use or exemption for a system of records, or when proposing to carry out a new or altered matching program. (See paragraph 4c(1) and 4d(1) above on what constitutes a reportable alteration.)

a. *Publishing New or Altered Systems of Records Notices and Exemption Rules.*

(1) *Who Publishes.* The agency responsible for operating the system of records makes the necessary publication. Publication should be carried out at the departmental or agency level. Where a system of records is to be operated exclusively by a component, the department rather than the component should publish the notice. Thus, for example, the Department of the Treasury would publish a system of records notice covering a system operated exclusively by the Internal Revenue Service. Note that if the agency is proposing to exempt the system under Section (j) or (k) of the Act, it must publish a rule in addition to the system of records notice.

(a) *Governmentwide Systems of Records.* Certain agencies publish systems of records containing records for which they have governmentwide responsibilities. The records may be located in other agencies, but they are being used under the authority of and in conformance with the rules mandated by the publishing agency. The Office of Personnel Management for example, has published a number of governmentwide systems of records relating to the operation of the government's personnel program. Agencies should not publish systems of records that wholly or partly duplicate existing governmentwide systems of records.

(b) *Section (m) Contract Provisions.* When an agency provides by contract for the operation of a system of records, it should ensure that a system of records notice describing the system has been published. It should also review the notice to ensure that it contains a routine use under Section (e)(4)(D) of the Act permitting disclosure to the contractor and his or her personnel.

(2) *When to Publish.*

(a) *System Notice.* It must appear in the **Federal Register** before the agency begins to operate the system, e.g., collect and use the information.

(b) *Routine Use.* Must be published in the **Federal Register** 30 days before agency discloses records pursuant to its terms. If the sole change to an existing system of records is to add a routine use, the agency should either republish the entire system of records notice, a condensed description of the system of records, or a citation to the last full text **Federal Register** publication. (Note that the addition of a routine use to an existing system of records requires a report to OMB and Congress, and that the review period for this report is 40 days.)

(c) *Exemption Rule.* Must be established through informal rulemaking pursuant to the Administrative Procedure Act. This process generally requires publication of a proposed rule, a period during which the public may comment, publication of a final rule, and the adoption of the final rule. Agencies may not withhold records under an exemption until these requirements have been met.

(3) *Format.* Agencies should follow the publication format contained in the Office of the Federal Register *Document Drafting Handbook* obtainable from the Government Printing Office.

b. *Publishing Matching Notices.*

(1) *Who Publishes.* Generally, the Recipient Federal agency (or the Federal source agency in a match conducted by a nonfederal agency) is responsible for publishing in the **Federal Register** a notice describing the new or altered matching program. However, in large, multi-agency matching programs, where the recipient agency is merely performing the matches, and the benefit accrues to the source agencies, the partners should assign responsibility for compliance with the administrative requirements in a fair and reasonable way. This may mean having the matching agency carry out these requirements for all parties, having one

participant designated to do so, or having each source so for its own matching program(s).

(2) *Timing.* Publication must occur at least 30 days prior to the initiation of any matching activity carried out under a new or substantially altered matching program. For renewals of programs agencies wish to continue past the 30 month period of initial eligibility (i.e., the initial 18 months plus a 1 year extension), publication must occur at least 30 days prior to the expiration of the existing matching agreement. (But note that a report to OMB and the Congress is also required with a 40 day review period).

(3) *Format.* The matching notice shall be in the format prescribed by the Office of the Federal Register *Document Drafting Handbook* and contain the following information:

(a) The name of the Recipient Agency.

(b) The Name(s) of the Source Agencies.

(c) The beginning and ending dates of the match.

(d) A brief description of the matching program, including its purpose; the legal authorities authorizing its operation; categories of individuals involved; and identification of records used, including name(s) of Privacy Act Systems of records.

(e) The identification, address, and telephone number of a Recipient Agency official who will answer public inquiries about the program.

Table 1—Reporting Requirements

Report	When Due	Recipient**
Biennial Privacy Act Report	June 30, 1994, 1996, 1998, 2000	Administrator, OIRA
Biennial Matching Activity Report	June 30, 1994, 1996, 1998, 2000	Administrator, OIRA
New System of Records Report	When establishing a system of records—at least 40 days before operating system*	Administrator, OIRA, Congress
Altered System of Records Report	When adding a new routine use, exemption, or otherwise significantly altering an existing system of records—at least 40 days before change to system takes place*.	Administrator, OIRA, Congress
New Matching Program Report	When establishing new matching program—at least 40 days before operating program*.	Administrator, OIRA, Congress
Renewal of Existing Matching Program	At least 40 days prior to expiration of one year extension of original program—treat as new program.	Administrator, OIRA, Congress
Altered Matching Program	When making a significant change to an existing matching program—at least 40 days before operating altered program*.	Administrator, OIRA, Congress
Matching Agreements	At least 40 days prior to start of matching program*	Congress

* Review Period: Note that the statutory reporting requirement is 30 days prior; the additional 10 days will ensure that OMB and Congress have sufficient time to review the proposal. Agencies should therefore ensure that reports are mailed expeditiously after being signed.

** Recipient Addresses: At bottom of envelope print "PRIVACY ACT REPORT"

House of Representatives: The Chair of the House Committee on Government Operations, 2157 RHOB, Washington, D.C. 20515–6143.

Senate: The Chair of the Senate Committee on Governmental Affairs, 340 SDOB, Washington, D.C. 20510–6250.

Office of Management and Budget: The Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Docket Library, NEOB Room 3201, Washington, D.C. 20503.

Appendix II to OMB Circular No. A–130

Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

[This Appendix is unchanged by this revision. *See* 50 FR 52730 (December 24, 1985).]

Appendix III to OMB Circular No. A–130

Security of Federal Automated Information Systems

[This Appendix is unchanged by this revision. *See* 50 FR 52730 (December 24, 1985).]

Appendix IV to OMB Circular No. A–130

Analysis of Key Sections

1. *Purpose*

The purpose of this Appendix is to provide a general context and explanation for the contents of the key Sections of the Circular.

2. *Background*

The Paperwork Reduction Act (PRA) of 1980, Public Law 96–511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, OMB, to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency, and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the Act with respect to Section 3504(b), general information policy, Section 3504(e), records management, Section 3504(f), privacy, and Section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 et seq.); Sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Computer Security Act, (40 U.S.C. 759 *note*); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other Sections of the PRA dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidates policy and procedures in seven previous OMB directives and rescinds those directives, as follows:

A–3—Government Publications

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities Transmittal Memorandum No. 1 to Circular No. A–71—Security of Federal Automated Information Systems

A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems

A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies

A–114—Management of Federal Audiovisual Activities

A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities

3. *Analysis*

Section 6, Definitions. *Access and Dissemination.* The original Circular No. A–130 distinguished between the terms "access to information" and "dissemination of information" in order to separate statutory requirements from policy considerations. The first term means giving members of the public, at their request, information to which they are entitled by a law such as the FOIA. The latter means actively distributing information to the public at the initiative of the agency. The distinction appeared useful at the time Circular No. A–130 was written, because it allowed OMB to focus discussion on Federal agencies' responsibilities for actively distributing information. However, popular usage and evolving technology have blurred differences between the terms "access" and "dissemination" and readers of the Circular were confused by the distinction. For example, if an agency "disseminates" information via an online computer system, one speaks of permitting users to "access" the information, and online "access" becomes a form of "dissemination."

Thus, the revision defines only the term "dissemination." Special considerations based on access statutes such as the Privacy Act and the FOIA are explained in context.

Government Information

The definition of "government information" includes information created, collected, processed, disseminated, or disposed of both by and for the Federal Government. This recognizes the increasingly distributed nature of information in electronic environments. Many agencies, in addition to collecting information for government use and for dissemination to the public, require members of the public to maintain information or to disclose it to the public. Sound information resources management dictates that agencies consider the costs and benefits of a full range of alternatives to meet government objectives. In some cases, there is no need for the government actually to collect the information itself, only to assure that it is made publicly available. For example, banks insured by the FDIC must provide statements of financial condition to bank customers on request. Particularly when information is available in electronic form, networks make the physical location of information increasingly irrelevant.

The inclusion of information created, collected, processed, disseminated, or disposed of for the Federal Government in the definition of "government information" does not imply that responsibility for implementing the provisions of the Circular itself extends beyond the executive agencies to other entities. Such an interpretation would be inconsistent with Section 4, Applicability, and with existing law. For example, the courts have held that requests to Federal agencies for release of information under the FOIA do not always extend to those performing information activities under grant or contract to a Federal agency. Similarly, grantees may copyright information where the government may not. Thus the information responsibilities of grantees and contractors are not identical to those of Federal agencies except to the extent that the agencies make them so in the underlying grants or contracts. Similarly, agency information resources management responsibilities do not extend to other entities.

Information Dissemination Product

This notice defines the term "information dissemination product" to include all information that is disseminated by Federal agencies. While the provision of access to online databases and search software included on compact disk, read-only memory (CD-ROM) are often called information services rather than products, there is no clear distinction and, moreover, no real difference for policy purposes between the two. Thus, the term "information dissemination product" applies to both products and services, and makes no distinction based on how the information is delivered.

Section 8a(1). *Information Management Planning.* Parallel to new Section 7, Basic Considerations and Assumptions, Section 8a begins with information resources management planning. Planning is the process of establishing a course of action to achieve desired results with available resources. Planners translate organizational missions into specific goals and, in turn, into measurable objectives.

The PRA introduced the concept of information resources management and the principle of information as an institutional resource which has both value and associated costs. Information resources management is a tool that managers use to achieve agency objectives. Information resources management is successful if it enables managers to achieve agency objectives efficiently and effectively.

Information resources management planning is an integral part of overall mission planning. Agencies need to plan from the outset for the steps in the information life cycle. When creating or collecting information, agencies must plan how they will process and transmit the information, how they will use it, how they will protect its integrity, what provisions they will make for access to it, whether and how they will disseminate it, how they will store and retrieve it, and finally, how the information will ultimately be disposed of. They must also plan for the effects their actions and programs will have on the public and State and local governments.

The Role of State and Local Governments

OMB made additions at Sections 7a, 7e, and 7j, Basic Considerations and Assumptions, concerning State and local governments, and also in policy statements at Sections 8a(1)(c), (3)(f), (6)(c), 9(e), and 10(c).

State and local governments, and tribal governments, cooperate as major partners with the Federal Government in the collection, processing, and dissemination of information. For example, State governments are the principal collectors and/or producers of information in the areas of health, welfare, education, labor markets, transportation, the environment, and criminal justice. The States supply the Federal Government with data on aid to families with dependent children; medicare; school enrollments, staffing, and financing; statistics on births, deaths, and infectious diseases; population related data that form the basis for national estimates; employment and labor market data; and data used for census geography. National information resources are greatly enhanced through these major cooperating efforts.

Federal agencies need to be sensitive to the role of State and local governments, and tribal governments, in managing information and in managing information technology. When planning, designing, and carrying out information collections, agencies should systematically consider what effect their activities will have on cities, counties, and States, and take steps to involve these governments as appropriate. Agencies should ensure that their information collections impose the minimum burden and do not duplicate or conflict with local efforts or other Federal agency requirements or mandates. The goal is that Federal

agencies routinely integrate State and local government concerns into Federal information resources management practices. This goal is consistent with standards for State and local government review of Federal policies and programs.

Training

Training is particularly important in view of the changing nature of information resources management. Decentralization of information technology has placed the management of automated information and information technology directly in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities. Agencies must plan for incorporating policies and procedures regarding computer security, records management, protection of privacy, and other safeguards into the training of every employee and contractor.

Section 8a(2). *Information Collection.* The PRA requires that the creation or collection of information be carried out in an efficient, effective, and economical manner. When Federal agencies create or collect information—just as when they perform any other program functions—they consume scarce resources. Such activities must be continually evaluated for their relevance to agency missions.

Agencies must justify the creation or collection of information based on their statutory functions. Policy statement 8a(2) uses the justification standard—"necessary for the proper performance of the functions of the agency"—established by the PRA (44 U.S.C. 3504(c)(2)). Furthermore, the policy statement includes the requirement that the information have practical utility, as defined in the PRA (44 U.S.C. 3502(16)) and elaborated in 5 CFR Part 1320. Practical utility includes such qualities of information as accuracy, adequacy, and reliability. In the case of general purpose statistics or recordkeeping, practical utility means that actual uses can be demonstrated (5 CFR 1320.7(o)). It should be noted that OMB's intent in placing emphasis on reducing unjustified burden in collecting information, an emphasis consistent with the Act, is not to diminish the importance of collecting information whenever agencies have legitimate program reasons for doing so. Rather, the concern is that the burdens imposed should not exceed the benefits to be derived from the information. Moreover, if the same benefit can be obtained by alternative means that impose a lesser burden, that alternative should be adopted.

Section 8a(3). *Electronic Information Collection.* Section 7l articulates a basic assumption of the Circular that modern information technology can help the government provide better service to the public through improved management of government programs. One potentially useful application of information technology is in the government's collection of information. While some information collections may not be good candidates for electronic techniques, many are. Agencies with major electronic information collection programs have found that automated information collections allow them to meet program objectives more efficiently and effectively. Electronic data interchange (EDI) and related standards for the electronic exchange of information will ease transmission and processing of routine business transaction information such as invoices, purchase orders, price information, bills of lading, health insurance claims, and other common commercial documents. EDI holds similar promise for the routine filing of regulatory information such as tariffs, customs declarations, license applications, tax information, and environmental reports.

Benefits to the public and agencies from electronic information collection appear substantial. Electronic methods of collection reduce paperwork burden, reduce errors, facilitate validation, and provide increased convenience and more timely receipt of benefits.

The policy in Section 8a(3) encourages agencies to explore the use of automated techniques for collection of information, and sets forth conditions conducive to the use of those techniques.

Section 8a(4). *Records Management.* Section 8a(4) begins with the fundamental requirement for Federal records management, namely, that agencies create and keep adequate and proper documentation of their activities. Federal agencies cannot carry out their missions in a responsible and responsive manner without adequate recordkeeping. Section 7h articulates the basic considerations concerning records management. Policy statements concerning records management are also interwoven throughout Section 8a, particularly in subsections on planning (8a(1)(i)), information dissemination (8a(7)), and safeguards (8a(10)).

Records support the immediate needs of government—administrative, legal, fiscal—and ensure its continuity. Records are essential for protecting the rights and interests of the public, and for monitoring the work of public servants. The government needs records to ensure accountability to the public which includes making the information available to the public.

Each stage of the information life cycle carries with it records management responsibilities. Agencies need to record their plans, carefully document the content and procedures of information collection, ensure proper documentation as a feature of every information system, keep records of dissemination programs, and, finally, ensure that records of permanent value are preserved.

Preserving records for future generations is the archival mission. Advances in technology affect the amount of information that can be created and saved, and the ways this information can be made available. Technological advances can ease the task of records management; however, the rapid pace of change in modern technology makes decisions about the appropriate application of technology critical to records management. Increasingly the records manager must be concerned with preserving valuable electronic records in the context of a constantly changing technological environment.

Records schedules are essential for the appropriate maintenance and disposition of records. Records schedules must be prepared in a timely fashion, implement the General Records Schedules issued by the National Archives and Records Administration, be approved by the Archivist of the United States, and be kept accurate and current. (*See* 44 U.S.C. 3301 et seq.) The National Archives and Records Administration and the General Services Administration provide guidance and assistance to agencies in implementing records management responsibilities. They also evaluate agencies' records management programs to determine the extent to which they are appropriately implementing their records management responsibilities.

Sections 8a(5) and 8a(6). *Information Dissemination Policy.* Section 8a(5). Providing information to the public. Every agency has a responsibility to inform the public within the context of its mission. This responsibility requires that agencies distribute information at the agency's initiative, rather than merely responding when the public requests information.

The FOIA requires each agency to publish in the **Federal Register** current descriptions of agency organization, where and how the public may obtain information, the general methods and procedural requirements by which agency functions are determined, rules of procedure, descriptions of forms and

how to obtain them, substantive regulations, statements of general policy, and revisions to all the foregoing (5 U.S.C. 552(a)(1)). The Privacy Act also requires publication of information concerning "systems of records" which are records retrieved by individual identifier such as name, Social Security Number, or fingerprint. The government in the Sunshine Act requires agencies to publish meeting announcements (5 U.S.C. 552b (e)(1)). The PRA (44 U.S.C. 3507(a)(2)) and its implementing regulations (5 CFR Part 1320) require agencies to publish notices when they submit information collection requests for OMB approval. The public's right of access to government information under these statutes is balanced against other concerns, such as an individual's right to privacy and protection of the government's deliberative process.

As agencies satisfy these requirements, they provide the public basic information about government activities. Other statutes direct specific agencies to issue specific information dissemination products or to conduct information dissemination programs. Beyond generic and specific statutory requirements, agencies have responsibilities to disseminate information as a necessary part of performing their functions. For some agencies the responsibility is made explicit and sweeping; for example, the Agriculture Department is directed to "... diffuse among people of the United States, useful information on subjects connected with agriculture. ..." (7 U.S.C. 2201) For other agencies, the responsibility may be much more narrowly drawn.

Information dissemination is also a consequence of other agency activities. Agency programs normally include an organized effort to inform the public about the program. Most agencies carry out programs that create or collect information with the explicit or implicit intent that the information will be made public. Disseminating information is in many cases the logical extension of information creation or collection.

In other cases, agencies may have information that is not meant for public dissemination but which may be the subject of requests from the public. When the agency establishes that there is public demand for the information and that it is in the public interest to disseminate the information, the agency may decide to disseminate it automatically.

The policy in Section 8a(5)(d) sets forth several factors for agencies to take into account in conducting their information dissemination programs. First, agencies must balance two goals: maximizing the usefulness of the information to the government and the public, and minimizing the cost to both. Deriving from the basic purposes of the PRA (44 U.S.C. 3501), the two goals are frequently in tension because increasing usefulness usually costs more. Second, Section 8a(5)(d)(ii) requires agencies to conduct information dissemination programs equitably and in a timely manner. The word "equal" was removed from this Section since there may be instances where, for example, an agency determines that its mission includes disseminating information to certain specific groups or members of the public, and the agency determines that user charges will constitute a significant barrier to carrying out this responsibility.

Section 8a(5)(d)(iii), requiring agencies to take advantage of all dissemination channels, recognizes that information reaches the public in many ways. Few persons may read a **Federal Register** notice describing an agency action, but those few may be major secondary disseminators of the information. They may be affiliated with publishers of newspapers, newsletters, periodicals, or books; affiliated with online database providers; or specialists in certain information fields. While millions of information users in the public may be affected by the agency's action, only a handful may have direct contact with the agency's own information dissemination products. As a deliberate strategy, therefore, agencies should cooperate with the information's original creators, as well as with secondary disseminators, in order to further information dissemination goals and foster a diversity of information sources. An adjunct responsibility to this strategy is reflected in Section 8a(5)(d)(iv), which directs agencies to assist the public in finding government information. Agencies may accomplish this, for example, by specifying and disseminating "locator" information, including information about content, format, uses and limitations, location, and means of access.

Section 8a(6). *Information Dissemination Management System.* This Section requires agencies to maintain an information dissemination management system which can ensure the routine performance of certain functions, including the essential functions previously required by Circular No. A–3. Smaller agencies need not establish elaborate formal systems, so long as the heads of the agencies can ensure that the functions are being performed.

Subsection (6)(a) carries over a requirement from OMB Circular No. A–3 that agencies' information dissemination products are to be, in the words of 44 U.S.C. 1108, "necessary in the transaction of the public business required by law of the agency." (Circular No. A–130 uses the expression "necessary for the proper performance of agency functions," which OMB considers to be equivalent to the expression in 44 U.S.C. 1108.) The point is that agencies should determine systematically the need for each information dissemination product.

Section 8a(6)(b) recognizes that to carry out effective information dissemination programs, agencies need knowledge of the marketplace in which their information dissemination products are placed. They need to know what other information dissemination products users have available in order to design the best agency product. As agencies are constrained by finite budgets, when there are several alternatives from which to choose, they should not expend public resources filling needs which have already been met by others in the public or private sector. Agencies have a responsibility not to undermine the existing diversity of information sources.

At the same time, an agency's responsibility to inform the public may be independent of the availability or potential availability of a similar information dissemination product. That is, even when another governmental or private entity has offered an information dissemination product identical or similar to what the agency would produce, the agency may conclude that it nonetheless has a responsibility to disseminate its own product. Agencies should minimize such instances of duplication but could reach such a conclusion because legal considerations require an official government information dissemination product.

Section 8a(6)(c) makes the Circular consistent with current practice (See OMB Bulletins 88–15, 89–15, 90–09, and 91–16), by requiring agencies to establish and maintain inventories of information dissemination products. (These bulletins eliminated annual reporting to OMB of title-by-title listings of publications and the requirement for agencies to obtain OMB approval for each new periodical. Publications are now reviewed as necessary during the normal budget review process.) Inventories help other agencies and the public identify information which is available. This serves both to increase the efficiency of the dissemination function and to avoid unnecessary burdens of duplicative information collections. A corollary, enunciated in

Section 8a(6)(d), is that agencies can better serve public information needs by developing finding aids for locating information produced by the agencies. Finally, Section 8a(6)(f) recognizes that there will be situations where agencies may have to take appropriate steps to ensure that members of the public with disabilities whom the agency has a responsibility to inform have a reasonable ability to access the information dissemination products

Depository Library Program

Sections 8a(6)(g) and (h) pertain to the Federal Depository Library Program. Agencies are to establish procedures to ensure compliance with 44 U.S.C. 1902, which requires that government publications (defined in 44 U.S.C. 1901 and repeated in Section 6 of the Circular) be made available to depository libraries through the Government Printing Office (GPO).

Depository libraries are major partners with the Federal Government in the dissemination of information and contribute significantly to the diversity of information sources available to the public. They provide a mechanism for wide distribution of government information that guarantees basic availability to the public. Executive branch agencies support the depository library program both as a matter of law and on its merits as a means of informing the public about the government. On the other hand, the law places the administration of depository libraries with GPO. Agency responsibility for the depository libraries is limited to supplying government publications through GPO.

Agencies can improve their performance in providing government publications as well as electronic information dissemination products to the depository library program. For example, the proliferation of "desktop publishing" technology in recent years has afforded the opportunity for many agencies to produce their own printed documents. Many such documents may properly belong in the depository libraries but are not sent because they are not printed at GPO. The policy requires agencies to establish management controls to ensure that the appropriate documents reach the GPO for inclusion in the depository library program.

At present, few agencies provide electronic information dissemination products to the depository libraries. At the same time, a small but growing number of information dissemination products are disseminated only in electronic format.

OMB believes that, as a matter of policy, electronic information dissemination products generally should be provided to the depository libraries. Given that production and supply of information dissemination products to the depository libraries is primarily the responsibility of GPO, agencies should provide appropriate electronic information dissemination products to GPO for inclusion in the depository library program.

While cost may be a consideration, agencies should not conclude without investigation that it would be prohibitively expensive to place their electronic information dissemination products in the depository libraries. For electronic information dissemination products other than online services, agencies may have the option of having GPO produce the information dissemination product for them, in which case GPO would pay for depository library costs. Agencies should consider this option if it would be a cost effective alternative to the agency making its own arrangements for production of the information dissemination product. Using GPO's services in this manner is voluntary and at the agency's discretion. Agencies could also consider negotiating other terms, such as inviting GPO to participate in agency procurement orders in order to distribute the necessary copies for the depository libraries. With adequate advance planning, agencies should be able to provide electronic information dissemination products to the depository libraries at nominal cost.

In a particular case, substantial cost may be a legitimate reason for not providing an electronic information dissemination product to the depository library program. For example, for an agency with a substantial number of existing titles of electronic information dissemination products, furnishing copies of each to the depository libraries could be prohibitively expensive. In that situation, the agency should endeavor to make available those titles with the greatest general interest, value, and utility to the public. Substantial cost could also be an impediment in the case of some online information services where the costs associated with operating centralized databases would make provision of unlimited direct access to numerous users prohibitively expensive. In both cases, agencies should consult with the GPO, in order to identify those information dissemination products with the greatest public interest and utility for dissemination. In all cases, however, where an agency discontinues publication of an information dissemination product in paper format in favor of electronic formats, the agency should work with the GPO to ensure availability of the information dissemination product to depository libraries.

Notice to the Public

Sections 8a(6)(i) and (j) present new practices for agencies to observe in communicating with the public about information dissemination. Among agencies' responsibilities for dissemination is an active knowledge of, and regular consultation with, the users of their information dissemination products. A primary reason for communication with users is to gain their contribution to improving the quality and relevance of government information—how it is created, collected, and disseminated. Consultations with users might include participation at conferences and workshops, careful attention to correspondence and telephone communications (e.g., logging and analyzing inquiries), or formalized user surveys.

A key part of communicating with the public is providing adequate notice of agency information dissemination plans. Because agencies' information dissemination actions affect other agencies as well as the public, agencies must forewarn other agencies of significant actions. The decision to initiate, terminate, or substantially modify the content, form, frequency, or availability of significant products should also trigger appropriate advance public notice. Where appropriate, the Government Printing Office should be notified directly. Information dissemination products deemed not to be significant require no advance notice.

Examples of significant products (or changes to them) might be those that:

(a) are required by law; e.g., a statutorily mandated report to Congress;

(b) involve expenditure of substantial funds;

(c) by reason of the nature of the information, are matters of continuing public interest; e.g., a key economic indicator;

(d) by reason of the time value of the information, command public interest; e.g., monthly crop reports on the day of their release;

(e) will be disseminated in a new format or medium; e.g., disseminating a printed product in electronic medium, or disseminating a machine-readable data file via on-line access.

Where members of the public might consider a proposed new agency product unnecessary or duplicative, the

agency should solicit and evaluate public comments. Where users of an agency information dissemination product may be seriously affected by the introduction of a change in medium or format, the agency should notify users and consider their views before instituting the change. Where members of the public consider an existing agency product important and necessary, the agency should consider these views before deciding to terminate the product. In all cases, however, determination of what is a significant information dissemination product and what constitutes adequate notice are matters of agency judgment.

Achieving Compliance with the Circular's Requirements

Section 8a(6)(k) requires that the agency information dissemination management system ensure that, to the extent existing information dissemination policies or practices are inconsistent with the requirements of this Circular, an orderly transition to compliance with the requirements of this Circular is made. For example, some agency information dissemination products may be priced at a level which exceeds the cost of dissemination, or the agency may be engaged in practices which are otherwise unduly restrictive. In these instances, agencies must plan for an orderly transition to the substantive policy requirements of the Circular. The information dissemination management system must be capable of identifying these situations and planning for a reasonably prompt transition. Instances of existing agency practices which cannot immediately be brought into conformance with the requirements of the Circular are to be addressed through the waiver procedures of Section 10(b).

Section 8a(7). *Avoiding Improperly Restrictive Practices.* Federal agencies are often the sole suppliers of the information they hold. The agencies have either created or collected the information using public funds, usually in furtherance of unique governmental functions, and no one else has it. Hence agencies need to take care that their behavior does not inappropriately constrain public access to government information.

When agencies use private contractors to accomplish dissemination, they must take care that they do not permit contractors to impose restrictions that undercut the agencies' discharge of their information dissemination responsibilities. The contractual terms should assure that, with respect to dissemination, the contractor behaves as though the contractor were the agency. For example, an agency practice of selling, through a contractor, on-line access to a database but refusing to sell copies of the database itself may be improperly restrictive because it precludes the possibility of another firm making the same service available to the public at a lower price. If an agency is willing to provide public access to a database, the agency should be willing to sell copies of the database itself.

By the same reasoning, agencies should behave in an even-handed manner in handling information dissemination products. If an agency is willing to sell a database or database services to some members of the public, the agency should sell the same products under similar terms to other members of the public, unless prohibited by statute. When an agency decides it has public policy reasons for offering different terms of sale to different groups in the public, the agency should provide a clear statement of the policy and its basis.

Agencies should not attempt to exert control over the secondary uses of their information dissemination products. In particular, agencies should not establish exclusive, restricted, or other distribution arrangements which interfere with timely and equitable availability of information dissemination products, and should not charge fees or royalties for the resale or redissemination of government information. These principles follow from the fact that the law prohibits the Federal Government from exercising copyright.

Agencies should inform the public as to the limitations inherent in the information dissemination product (e.g., possibility of errors, degree of reliability, and validity) so that users are fully aware of the quality and integrity of the information. If circumstances warrant, an agency may wish to establish a procedure by which disseminators of the agency's information may at their option have the data and/or value-added processing checked for accuracy and certified by the agency. Using this method, rediseminators of the data would be able to respond to the demand for integrity from purchasers and users. This approach could be enhanced by the agency using its authority to trademark its information disseminaton product, and requiring that redisseminators who wish to use the trademark agree to appropriate integrity procedures. These methods have the possibility of promoting diversity, user responsiveness, and efficiency as well as integrity. However, an agency's responsibility to protect against misuse of a government information dissemination product does not extend to restricting or regulating how the public actually uses the information. Agencies should not attempt to condition the resale or redissemination of its information dissemination products by members of the public.

User charges

Title 5 of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701) establishes Federal policy regarding fees assessed for government services, and for sale or use of government property or resources. OMB Circular No. A–25, User Charges, implements the statute. It provides for charges for government goods and services that convey special benefits to recipients beyond those accruing to the general public. It also establishes that user charges should be set at a level sufficient to recover the full cost of providing the service, resource, or property. Since Circular No. A–25 is silent as to the extent of its application to government information dissemination products, full cost recovery for information dissemination products might be interpreted to include the cost of collecting and processing information rather than just the cost of dissemination. The policy in Section 8a(8)(c) clarifies the policy of Circular No. A–25 as it applies to information dissemination products.

Statutes such as FOIA and the Government in the Sunshine Act establish a broad and general obligation on the part of Federal agencies to make government information available to the public and to avoid erecting barriers that impede public access. User charges higher than the cost of dissemination may be a barrier to public access. The economic benefit to society is maximized when government information is publicly disseminated at the cost of dissemination. Absent statutory requirements to the contrary, the general standard for user charges for government information dissemination products should be to recover no more than the cost of dissemination. It should be noted in this connection that the government has already incurred the costs of creating and processing the information for governmental purposes in order to carry out its mission.

Underpinning this standard is the FOIA fee structure which establishes limits on what agencies can charge for access to Federal records. That Act permits agencies to charge only the direct reasonable cost of search, reproduction and, in certain cases, review of requested records. In the case of FOIA requests for information

dissemination products, charges would be limited to reasonable direct reproduction costs alone. No search would be needed to find the product, thus no search fees would be charged. Neither would the record need to be reviewed to determine if it could be withheld under one of the Act's exemptions since the agency has already decided to release it. Thus, FOIA provides an information "safety net" for the public.

While OMB does not intend to prescribe procedures for pricing government information dissemination products, the cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing a product for dissemination and actually disseminating it to the public. When an agency prepares an information product for its own internal use, costs associated with such production would not generally be recoverable as user charges on subsequent dissemination. When the agency prepares the product for public dissemination, and disseminates it, costs associated with preparation and actual dissemination would be recoverable as user charges.

When agencies provide custom tailored information services to specific individuals or groups, full cost recovery, including the costs of collection and processing, is appropriate. For example, if an agency prepares special tabulations or similar services from its databases in answer to a specific request from the public, all costs associated with fulfilling the request would be charged, and the requester should be so informed before work is begun.

In a few cases, agencies engaging in information collection activities augment the information collection at the request of, and with funds provided by, private sector groups. Since the 1920s, the Bureau of the Census has carried out, on request, surveys of certain industries at greater frequency or at a greater level of detail than Federal funding would permit, because gathering the additional information is consistent with Federal purposes and industry groups have paid the additional information collection and processing costs. While the results of these surveys are disseminated to the public at the cost of dissemination, the existence and availability of the additional government data are special benefits to certain recipients beyond those accruing to the public. It is appropriate that those recipients should bear the full costs of information collection and processing, in addition to the normal costs of dissemination.

Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended. If an agency mission includes disseminating information to certain specific groups or members of the public and the agency determines that user charges will constitute a significant barrier to carrying out this responsibility, the agency may have grounds for reducing or eliminating its user charges for the information dissemination product, or for exempting some recipients from the charge. Such reductions or eliminations should be the subject of agency determinations on a case by case basis and justified in terms of agency policies.

Section 8a(8). *Electronic Information Dissemination.* Advances in information technology have changed government information dissemination. Agencies now have available new media and formats for dissemination, including CD-ROM, electronic bulletin boards, and public networks. The growing public acceptance of electronic data interchange (EDI) and similar standards enhances their attractiveness as methods for government information dissemination. For example, experiments with the use of electronic bulletin boards to advertise Federal contracting opportunities and to receive vendor quotes have achieved wider dissemination of information about business opportunities with the Federal Government than has been the case with traditional notices and advertisements. Improved information dissemination has increased the number of firms expressing interest in participating in the government market and decreased prices to the government due to expanded competition. In addition, the development of public electronic information networks, such as the Internet, provides an additional way for agencies to increase the diversity of information sources available to the public. Emerging standards such as Wide Area Information Servers (using the NISO Z39.50 standard) will be used increasingly to facilitate dissemination of government information such as environmental data, international trade information, and economic statistics in a networked environment.

A basic purpose of the PRA is "to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government." (44 U.S.C. 3501(3)) Agencies can frequently enhance the value and practical utility of government information as a national resource by disseminating information in electronic media. Electronic collection and dissemination may substantially increase the usefulness of government information dissemination products for three reasons. First, information disseminated electronically is likely to be more timely and accurate because it does not require data re-entry. Second, electronic records often contain more complete and current information because, unlike paper, it is relatively easy to make frequent changes. Finally, because electronic information is more easily manipulated by the user and can be tailored to a wide variety of needs, electronic information dissemination products are more useful to the recipients.

As stated at Section 8a(1)(h), agencies should use voluntary standards and Federal Information Processing Standards to the extent appropriate in order to ensure the most cost effective and widespread dissemination of information in electronic formats.

Agencies can frequently make government information more accessible to the public and enhance the utility of government information as a national resource by disseminating information in electronic media. Agencies generally do not utilize data in raw form, but edit, refine, and organize the data in order to make it more accessible and useful for their own purposes. Information is made more accessible to users by aggregating data into logical groupings, tagging data with descriptive and other identifiers, and developing indexing and retrieval systems to facilitate access to particular data within a larger file. As a general matter, and subject to budgetary, security, or legal constraints, agencies should make available such features developed for internal agency use as part of their information dissemination products.

There will also be situations where the agency determines that its mission will be furthered by providing enhancements beyond those needed for its own use, particularly those that will improve the public availability of government information over the long term. In these instances, the agency should evaluate the expected usefulness of the enhanced information in light of its mission, and where appropriate construct partnerships with the private sector to add these elements of value. This approach may be particularly appropriate as part of a strategy to utilize new technology enhancements, such as graphic images, as part of a particular dissemination program.

Section 8a(9). *Information Safeguards.* The basic premise of this Section is that agencies should provide

an appropriate level of protection to government information, given an assessment of the risks associated with its maintenance and use. Among the factors to be considered include meeting the specific requirements of the Privacy Act of 1974 and the Computer Security Act of 1987.

In particular, agencies are to ensure that they meet the requirements of the Privacy Act regarding information retrievable by individual identifier. Such information is to be collected, maintained, and protected so as to preclude intrusion into the privacy of individuals and the unwarranted disclosure of personal information. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. To the extent that agencies share information which they have a continuing obligation to protect, agencies should see that appropriate safeguards are instituted. Appendix I prescribes agency procedures for the maintenance of records about individuals, reporting requirements to OMB and Congress, and other special requirements of specific agencies, in accordance with the Privacy Act.

This Section also incorporates the requirement of the Computer Security Act of 1987 that agencies plan to secure their systems commensurate with the risk and magnitude of loss or harm that could result from the loss, misuse, or unauthorized access to information contained in those systems. It includes assuring the integrity, availability, and appropriate confidentiality of information. It also involves protection against the harm that could occur to individuals or entities outside of the Federal Government as well as the harm to the Federal Government. Such protection includes limits on collection and sharing of information and procedures to assure the integrity of information as well as requirements to adequately secure the information.

Incorporation of Circular No. A–114

OMB Circular No. A–114, Management of Federal Audiovisual Activities, last revised on March 20, 1985, prescribes policies and procedures to improve Federal audiovisual management. Although OMB will rescind Circular No. A–114, its essential policies and procedures will continue. This revision provides information resources management policies and principles independent of medium, including paper, electronic, or audiovisual. By including the term "audiovisual" in the definition of "information," audiovisual materials are incorporated into all policies of this Circular.

The requirement in Circular No. A–114 that the head of each agency designate an office with responsibility for the management oversight of an agency's audiovisual productions and that an appropriate program for the management of audiovisual productions in conformance with 36 CFR 1232.4 is incorporated into this Circular at Section 9a(10). The requirement that audiovisual activities be obtained consistent with OMB Circular No. A–76 is covered by Sections 8a(1)(d), 8a(5)(d)(i) and 8a(6)(b).

Procurement policies contained in Circular No. A–114 will be incorporated into an Office of Federal Procurement Policy Letter.

The National Archives and Records Administration will continue to prescribe the records management and archiving practices of agencies with respect to audiovisual productions at 36 CFR 1232.4, "Audiovisual Records Management."

Section 9a(11). *Ombudsman.* The senior agency official designated by the head of each agency under 44 U.S.C. 3506(b) is charged with carrying out the responsibilities of the agency under the PRA. Agency senior information resources management officials are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the agency senior information resources management official will work as an ombudsman to investigate alleged instances of agency failure to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

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[The remainder of Appendix IV, which covers sections not changed in this revision, is also unchanged. *See* 50 FR 52730 (December 24, 1985).]

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Part IV

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AB91

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part 685 to title 34 of the Code of Federal Regulations containing regulations for the Federal Direct Loan Demonstration Program, hereafter referred to as the Federal Direct Student Loan Program (FDSLP).

These regulations are being published under unusual circumstances. The statute that authorizes the FDSLP requires that final regulations for the demonstration program be published by July 1, 1993. However, the President has proposed significant changes to the governing legislation as part of the Student Loan Reform Act of 1993. If the Student Loan Reform Act is enacted in whole or in part, the scope of the FDSLP and the terms and conditions for borrowers and schools participating in the FDSLP would be altered significantly. At this time, passage of the Student Loan Reform Act in some form seems likely. The Student Loan Reform Act would require the Secretary to promulgate rules necessary for the administration of the FDSLP that would in large part supersede these regulations.

These final regulations govern the Federal Direct Stafford Loan Program, the Federal Direct Supplemental Loans for Students Program, and the Federal Direct PLUS Program, collectively referred to as the Federal Direct Student Loan Program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 685.200. Section 685.200 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., (2100 Corridor, L'Enfant Plaza), Washington, DC 20202–5162. Telephone: (202) 732–1818. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The reauthorization of the HEA established the FDSLP, a program designed to test the effectiveness of a direct student loan program in comparison to the Federal Family Education Loan (FFEL) Program, formerly known as the Guaranteed Student Loan Programs. In the FFEL Program, the Secretary works with private lenders and guaranty agencies to provide loans to students and parents of students attending postsecondary schools. In the FDSLP, the Federal government provides loan capital, schools originate loans on behalf of the Secretary, and the Secretary performs functions necessary in the FDSLP that in the FFEL Program are performed by private lenders and guaranty agencies. These functions will be performed primarily by contractors under the Secretary's direction. Loans will be made under the FDSLP for the period beginning July 1, 1994 and ending June 30, 1998.

The Department of Education (ED) and the General Accounting Office (GAO) will analyze and evaluate the FDSLP and compare this demonstration program to the FFEL Program. During the demonstration period, GAO is required to recommend to Congress whether to modify, continue, expand, or terminate the loan demonstration program and whether to replace all or some of the FFEL Program.

On April 2, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 17472). However, on May 5, 1993, the President sent a legislative proposal to Congress, the Student Loan Reform Act of 1993, that would expand the scope of the FDSLP to fully replace the guaranteed loan programs by the beginning of the 1997–1998 academic year. The primary objective of this proposed legislation is to revamp the student loan system to better serve students. A new streamlined system would simplify the administrative tasks of educational institutions, make the system easier to understand, provide students with greater choice in repayment plans, and lower costs to taxpayers and borrowers.

Under the Student Loan Reform Act, borrowers would continue to be assured of access to loan funds. As in the demonstration program, direct loan capital would not be limited by congressional appropriations. Funds would flow promptly to schools solely on the basis of borrower eligibility and needs. Once the system is fully implemented, a portion of the general cost savings from direct lending would be passed on to borrowers in the form of a reduction in the interest rate on their loans.

The Student Loan Reform Act would phase in a full-scale direct lending program over 4 years, beginning in academic year 1994–95. The goal is to begin with 4 percent of new loan volume in direct lending in the first year, 25 percent the second year, 60 percent the third year, and full implementation in academic year 1997–98. In addition, the proposed legislation removes the requirement that the Secretary select schools to be in a control group for purposes of comparing direct lending to the FFEL Program.

Some key provisions of the Student Loan Reform Act that would impact on schools and borrowers include—

- Criteria for measuring the financial and administrative capability of schools to originate loans that would be used to determine which schools may originate loans;
- The availability of alternative originators for schools that do not originate loans;
- A fee to help cover some of the costs of loan origination for schools that originate;
- The availability of a range of flexible repayment options to suit borrowers' varied financial circumstances, including options for those borrowers who choose to take low-paying community service jobs; and
- A consolidation option for borrowers, without regard to the total amount of the outstanding balance.

If the Student Loan Reform Act is enacted, the current demonstration program would become phase one of the full-scale program, with the same anticipated loan volume. If enacted, the provisions of the Student Loan Reform Act would take precedence over many of the provisions of these regulations. Because of the short timeframe between the anticipated enactment of the Student Loan Reform Act and the FDSLP startup, the proposed legislation allows the Secretary to publish a notice in the **Federal Register** specifying whatever standards, criteria, and procedures, consistent with the statute, the Secretary determines are reasonable and necessary to the successful implementation of the first year of the FDSLP. This notice would incorporate the provisions of these final regulations except where the statute requires a

change or addition. The second and subsequent years of the FDSLP will be regulated under the normal regulatory process (i.e., NPRM, public comments, final regulations).

The Secretary received many comments regarding the proposed legislation as well as the NPRM. Comments concerning the proposed legislation are not addressed in these final regulations.

Certain technical amendments to the HEA also have been drafted, including the incorporation of unsubsidized Federal Direct Stafford loans into the FDSLP. At the time these final regulations were prepared, technical amendments had not been enacted. In addition, many provisions in these final regulations are based on similar provisions in the FFEL Program regulations. The FFEL Program regulations are being revised under a negotiated rulemaking process. Where appropriate, the FDSLP regulations will also be amended in the future to incorporate changes made in the FFEL Program regulations as a result of the negotiations, or to reflect any technical amendments enacted.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 230 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Because the FDSLP is a demonstration program and will be evaluated and compared to the FFEL Program, proposed changes to provisions in the NPRM that are identical to provisions in the FFEL Program regulations have not been accepted.

Funds Disbursement

Comment: A number of commenters expressed confusion about how a school would draw down funds from ED. Other commenters said the limitation on the amount a school could draw down (*i.e.*, the amount a school would need to fund loans it planned to disburse within a 3-day period), was too short. Some commenters asked how students' funding needs would be met if the amount a school needed to fund those students exceeded its authorization level.

Discussion: Schools will be authorized to draw down funds for making FDSLP loans using the same process currently used to draw down money for the Federal Pell Grant Program and the Federal campus-based programs, *i.e.*, the Department of Education's Payment Management System (EDPMS). EDPMS handles payments to schools for those student aid programs for which the school serves as the disbursing agent to the student. The role of EDPMS is to serve as the school's single point of contact in the Department for cash matters. EDPMS manages cash advances to schools, expedites the flow of cash between the Federal government and schools, and transmits data back to the appropriate program office (*i.e.*, FDSLP).

For the FDSLP, funds will be transferred using the Automated Clearing House/Electronic Funds Transfer method (ACH/EFT). This method provides paperless payment processing. A FDSLP school will transmit an electronic payment request using the school-based software provided by the Secretary, or will telephone its payment request, to the central service bureau, (currently National Computer Systems (NCS)). After ensuring that the request is valid, the central service bureau will forward the request to EDPMS. Each request will be transmitted to the Federal Reserve Bank, which will deposit funds electronically into the school's FDSLP bank. Funds will be received within 3 working days of the school's request. For example, a request made by 2 p.m. E.S.T. (eastern standard time) on Monday will generally be deposited on Wednesday to the school's account. However, a school should always verify that the deposit has been made.

The payment request transmitted by the school must be adequate to meet the school's FDSLP disbursement needs. As in the other Federal student aid programs, a payment request may not exceed "immediate need," which is defined as 3 days in advance of disbursement to the student. If the amount of funds drawn down is insufficient to meet its FDSLP loan funding needs, a school would simply transmit another payment request.

The FDSLP is a school entitlement program. The amount of funds a school can draw down from EDPMS is limited only by the eligibility of its student and parent borrowers. There is no "school authorization level" as in the other Federal student aid programs. The FDSLP will, however, use internal controls to monitor school drawdown requests in order to prevent and detect errors and potential fraud and abuse.

Changes: None.

Section 685.100 The Federal Direct Student Loan Program

Section 685.100(a)

Comment: A number of commenters noted that no equivalent to the unsubsidized Federal Stafford loan was included in the FDSLP. The commenters stated that the absence of an unsubsidized Federal Direct Stafford would put students attending a FDSLP school at a distinct financial disadvantage compared to students attending a school participating in the FFEL Program where they would have access to an unsubsidized Federal Stafford loan.

Discussion: The Secretary agrees with the commenters that if an unsubsidized Federal Direct Stafford loan is not available, students attending a FDSLP would be at a disadvantage. However, until the HEA is amended to allow unsubsidized Federal Direct Stafford loans to be made in the FDSLP, unsubsidized Federal Direct Stafford loans cannot be referenced in the regulation. The Secretary has been assured that the exclusion of the unsubsidized program was a legislative oversight that will be remedied shortly. Treatment of unsubsidized Federal Direct Stafford loans in the FDSLP will parallel the treatment of unsubsidized Federal Stafford loans in the FFEL Program.

Changes: None.

Section 685.102 Definitions

Co-maker

Comment: None.

Discussion: The statute does not use the term co-maker in discussing the provisions that apply to the Federal PLUS program. A co-maker is one of two individuals who is a joint borrower on a Federal PLUS loan and who is jointly and severally liable for repayment of the loan. In the Federal PLUS program, there are generally two eligible borrowers for each loan, *i.e.*, two parents who may borrow on behalf of an eligible student. Thus, it has been the Secretary's longstanding interpretation that both parents could obtain a loan for a single student as co-makers. However, both co-makers must also qualify in order to obtain the other benefits available to borrowers under the program, *e.g.*, deferments, forbearances, and cancellations. The Secretary has left it to the discretion of each guaranty agency in the FFEL Program to decide if co-makers will be used in their program. In recognition

that the circumstances that might make a PLUS loan borrower eligible for these benefits generally financially impacts the family and not just the individual, the Secretary has decided that the second signatory on a PLUS loan promissory note will be an endorser and not a co-maker. An endorser is defined as an individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Changes: The term "co-maker" has been deleted from the final regulations.

Loan Period

Comment: A number of commenters stated that the definition of "Loan Period" was incomplete and should be expanded to specify what the minimum loan period should be.

Discussion: The minimum period of enrollment for which a loan may be made must coincide with a *bona fide* academic term established by the school for which institutional charges are normally assessed.

Changes: The definition of loan period has been amended to clarify that the loan period must be at least an academic term.

School

Comment: Several commenters stated that the definition of "school" should include the discussion that is in the FFEL Program regulations that clarifies that a borrower may receive an in-school deferment based on attendance at an eligible school, regardless of whether that school is participating in a title IV program. The commenters believed that failure to include such a discussion would not allow borrowers with both FFEL Program and FDSLP loans to defer their loans concurrently.

Discussion: The definition of "school" found in § 685.102 is the definition of those schools that are eligible to participate in the FDSLP. The regulations for the FDSLP in § 685.305 cross reference the FFEL Program regulations (34 CFR 682.210) for purposes of determining deferment eligibility. The FFEL Program regulations specify that a borrower is entitled to a deferment while enrolled in a school defined in § 682.200. Accordingly, the deferment eligibility is the same for both programs.

Changes: None.

Section 685.200 Application Instructions for Schools to Participate in the FDSLP or the Control Group

Comment: Many commenters asked how schools would apply for participation in the FDSLP or the control group.

Discussion: The Secretary has developed an application for schools to use to apply to participate in the FDSLP or the control group. A draft of the application is included in these regulations as Appendix B; the Secretary will submit this application form for review under the Paperwork Reduction Act. A school must complete the approved application and submit it to the Secretary by October 1, 1993. Applications postmarked after October 1, 1993 will not be accepted. A school may use a single application to apply for participation in the FDSLP or the control group. The selection for schools to participate in the FDSLP will be conducted first.

Changes: The final regulations have been amended to specify the procedures a school must follow to apply for participation in the FDSLP or the control group. An application schools can use to apply has been provided as Appendix B.

Comment: Several commenters asked how a group of schools could apply as a consortium.

Discussion: Each school included as part of a consortium of schools must furnish the information requested in the application. The application has been designed so that schools wishing to apply as a consortium can do so. A school that is applying as part of a consortium may not also apply individually.

Changes: None.

Section 685.201 Requirements for Schools to Participate in the FDSLP

Comment: Several commenters asked how a consortium would operate in the FDSLP.

Discussion: A consortium of schools in the FDSLP would interact with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools in the consortia would be consolidated and funneled through a single point. This point may be a school or even a third party under a contractual arrangement with the consortium. Each school in the consortium will be required to sign the FDSLP participation agreement with the Secretary and be responsible for the information supplied through the consortium.

Changes: None.

Comment: Some commenters opposed the requirement that a school have certain computer equipment and participate electronically in the FDSLP. These commenters believed that the requirement would prevent a comparison between the FDSLP and the FFEL Program because guaranty agencies do not have similar requirements. Some commenters believed that guaranty agencies were prohibited from having similar requirements. Many commenters believed that the computer requirements were reasonable and that requiring electronic communication was a forward step in decreasing the paperwork that is endemic in the financial aid process.

Discussion: The HEA requires that loans made under the FDSLP must have the same terms and conditions as FFEL Program loans. This does not require that the FDSLP operate in the same way as the FFEL Program. By definition, schools will have a different relationship with the Secretary under the FDSLP than they do with guaranty agencies and lenders in the FFEL Program. Guaranty agencies are not prohibited from instituting similar requirements for schools participating in their programs. The Secretary plans to make maximum use of current technology. This technology will allow schools participating in the FDSLP to communicate with the Secretary quickly and efficiently and will reduce the paperwork that has come to be associated with student loans.

Changes: The computer configuration specified in the NPRM as a requirement to participate has been removed from the section in the final regulations that lists the requirements for schools to participate in the FDSLP. However, the requirement that a school in the FDSLP use the software or specifications provided by the Secretary is still included in the participation agreement a school will sign with the Secretary to participate in the FDSLP. The minimum computer configuration a school must have to use the software or specifications provided by the Secretary is an IBM-compatible personal computer (PC), 512K RAM, DOS version 3.3 or later, 4 MB space available on a hard disk, a floppy drive, and a 1200, 2400 or 9600 baud Hayes compatible asyncronous modem; or a mainframe computer supporting IBM 3780 RJE protocol and HASP using binary synchronous communications at 2400 and 4800 bits/second; and, a printer that prints on 8½ by 11 inch paper. Of course, depending upon the volume of loans for a particular school, additional capacity may be needed. The hardware needed to participate in the FDSLP is quite modest and is already resident at most schools.

Comment: A number of commenters asked if there would be technical assistance and training for schools and, if so, would there be a charge.

Discussion: The Secretary will provide technical assistance and

training to schools in the FDSLP. The Secretary will not charge schools for this service.

Changes: None.

Comment: Several commenters asked if the Secretary would provide data layouts and specifications to schools that use mainframe or minicomputers. If so, would there be a charge?

Discussion: The Secretary will provide data layouts and specifications at no charge to the school.

Changes: None.

Comment: Many commenters opposed the requirement that the school have a cohort default rate that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been calculated. Some commenters noted that a guaranty agency is prohibited from denying participation to an eligible school in the guaranty agency's program based solely on default rate of the school. Other commenters believed that the 25 percent threshold was too high and for a demonstration program, and participation should be limited to schools with demonstrated success with the FFEL Program.

Discussion: Because the FDSLP is a demonstration program that is only authorized for a 4-year period, the Secretary has decided not to apply the cohort default rate provisions applicable to the FFEL Program to schools selected to participate in the FDSLP. The Secretary is interested in permitting some schools with relatively high default rates to participate in the demonstration program. However, the Secretary does not believe it would be in the Federal fiscal interest to allow a school to participate in the FDSLP if there is a high probability that the school's participation in the FFEL Program would be terminated because of the school's high default rates if the school remained in the FFEL Program. Therefore, the final regulations retain the 25 percent cut-off for initial selection into the FDSLP.

Changes: None.

Section 685.202 Selection Process for Schools in the FDSLP

Comment: A number of commenters believed that the process the Secretary will use to determine which schools will participate in the FDSLP or the control group should be defined in greater detail. Many commenters asked how the Secretary will ensure that the limitations regarding guaranty agency volume are met. A number of commenters, noting the political pressures involved in determining which schools will participate, suggested that a third-party contractor be used for the selection process.

Discussion: The Secretary will ensure that the process used to select participants in the FDSLP and the control group will comply with the statutory requirements. The Secretary has obtained the services of a third-party contractor to assist in developing the selection process.

Changes: None.

Section 685.203 Selection Process for Schools in the Control Group

Comment: A number of commenters asked what specific activities would be required of schools in the control group.

Discussion: The Secretary and the GAO will conduct a comprehensive evaluation of the FDSLP and compare this demonstration program to the FFEL Program. A control group will be selected to provide a standard against which the FDSLP can be compared. Schools in the control group will continue to be required to follow the FFEL Program regulations. These final regulations do not impose any additional requirements on schools in the control group.

Changes: None.

Section 685.204 Appeal Procedure for Schools Selected to Participate in the FDSLP or the Control Group

Comment: Many commenters believed that the 15-day period during which a school could appeal its selection to participate in the FDSLP or the control group was too short.

Discussion: In enacting the FDSLP, Congress included the implementation schedule in the legislation. The statutory deadline for submitting applications to participate is October 1, 1993. If a school successfully appeals its selection, then the Secretary must select another school that also will have an opportunity to appeal. In addition, many schools have indicated that they will need to know if they will participate in the FDSLP prior to the January 1, 1994 deadline for the Secretary to publish the final list of participants in the FDSLP and the control group. Because of the statutory deadlines, the 15-day deadline for appeals has been retained. However, a school's appeal submitted after the deadline may be accepted if the school can demonstrate extenuating circumstances that prevented the appeal from being made by the deadline date.

Changes: None.

Section 685.301 Obtaining and Repaying a Loan

Section 685.301(a)(1)

Comment: Many commenters asked how a school will determine what interest rate to charge a Federal Direct Stafford borrower.

Discussion: If a Federal Direct Stafford loan borrower has a prior fixed-rate Federal Stafford or Federal Direct Stafford loan, the borrower will receive the same interest rate on a subsequent Federal Direct Stafford loan. Once the National Student Loan Data System (NSLDS) is operational, the interest rate will be determined when the borrower's need analysis application is processed through the Central Processing System. Until then, schools may rely upon the interest rate reported by the student on the Free Application for Federal Student Aid (FAFSA). In either case, the rate will be forwarded to the school on the student's Student Aid Report (SAR) or Electronic Student Aid Report (ESAR).

If the student does not have a prior fixed-rate Stafford loan, the student's interest rate will be a variable rate. The variable rate is published annually in the **Federal Register** and will be provided to schools. More detailed guidance will be provided in the policy and procedures manual that will be given to FDSLP schools.

Changes: None.

Comment: Several commenters asked what would be the school's responsibility if it had information regarding a borrower's interest rate that conflicted with the information on the SAR or ESAR.

Discussion: Consistent with 34 CFR part 668, subpart E, a school would be responsible for resolving conflicting information before a FDSLP loan could be made.

Changes: None.

Section 685.301(a)(3)

Comment: Many commenters asked for more specific details about how the process for Federal Direct PLUS loans would work. Many other commenters asked who would be responsible for doing the credit check required for Federal Direct PLUS loans.

Discussion: Federal Direct PLUS loans will be made through a process similar to the one used in the FFEL Program that starts with the parent filling out a combined application/promissory note and sending it to the school. The school will forward this application to the Secretary where the data will be key entered and a credit check performed. Alternatively, a school may enter the data using the software provided by the Secretary, and electronically forward

this information to the Secretary. In either case, the Secretary will perform the credit check and notify the school of the results. The school may then draw down money and disburse the loan funds in the same manner as Federal Direct Stafford and SLS loans.

Changes: The final regulations have been amended to reflect the origination process for a Federal Direct PLUS loan.

Section 685.302 Charges for Which FDSLP Borrowers are Responsible

Section 685.302(a)(1)(vi) and (vii)

Comment: One commenter noted that the provision for interest rebates for loans with an interest rate of 10 percent where the sum of the 91-day Treasury bill rate plus 3.25 percent is less than 10 percent should not be included in the FDSLP regulations.

Discussion: The Secretary agrees with the commenter.

Changes: Sections 685.302(a)(1)(vi)-(vii) have been deleted from the final regulations.

Section 685.302(b)-(e)

Comment: Many commenters believed that the Secretary would be charging a FDSLP borrower more than if the borrower were receiving a loan in the FFEL Program. They pointed out that while a borrower is in deferment, many lenders capitalize interest annually rather than quarterly, that the insurance premium is frequently less than 3 percent, and that late charges and collection charges before default are often waived or reduced.

Discussion: The proposed regulations reflected the extent of the Secretary's legal authority to assess certain charges. That authority is also reflected in these final regulations. The actual charges (not to exceed the authorized maximum) will be reflected in the promissory note and other program materials. The Secretary anticipates capitalizing interest annually during deferment periods, charging a loan fee of 6.5 percent, and assessing late charges and collection costs before default in limited circumstances.

Changes: The final regulations have been amended to clarify the Secretary's flexibility in assessing certain charges, including late charges and collection charges before default, and in the frequency of capitalization of interest. The final regulations have also been amended to provide for a single loan fee that is equal to the origination fee plus the insurance premium. The new combined loan fee will not exceed the maximum amount allowed for an origination fee plus insurance premium in the FFEL Program.

Section 685.304 Repayment of a Loan

Comment: Many commenters asked if the Internal Revenue Service (IRS) would be collecting FDSLP loans through payroll deduction. Other commenters said that the specific collection procedures that will be used in the collection of FDSLP loans should be included in the regulations.

Discussion: For the demonstration program, the Secretary does not anticipate that the IRS will be involved in the actual loan collection process through payroll deductions. The Secretary will contract for servicing and collection of FDSLP loans. Procedures to be followed by the contractor in the servicing and collection of FDSLP loans will be specified by the Secretary as part of the contractual agreement. However, it is the Secretary's intent to require FDSLP contractors, at a minimum, to follow the servicing and collection procedures in the FFEL Program regulations.

Changes: None.

Section 685.305 Deferment

Section 685.305

Comment: Several commenters asked what a school's responsibilities would be regarding deferments.

Discussion: A school's responsibility regarding deferments will be the same in the FDSLP as it is in the FFEL Program, *i.e.*, to certify the enrollment status of a student who requests an in-school deferment.

Changes: None.

Section 685.306 Forbearance

Section 685.306(a)(1)

Comment: A few of the commenters were concerned that the NPRM did not authorize an endorser to a FDSLP loan to request a forbearance.

Discussion: In the FFEL Program regulations, an endorser is authorized to request forbearance for a FFEL Program loan. A similar provision did not appear in the NPRM.

Changes: The final regulations have been revised to allow an endorser to request forbearance on a FDSLP loan.

Section 685.400 Agreement Between an Eligible School and the Secretary for Participation in the FDSLP

Section 685.400(b)(3)

Comment: Many commenters asked how long schools would have to forward promissory notes to the Secretary and be considered to have done so in a "timely" manner.

Discussion: The timing requirement for sending promissory notes to the Secretary will be determined by the reconciliation process, by which the school will reconcile drawdowns, disbursements, and cash on hand with the Secretary. A school must reconcile with the Secretary once each month for the previous month's activity. Schools will be assigned a monthly reconciliation period that ends at the same time each month. For example, if a school's reconciliation period ends on September 15th, the school would have to reconcile with the Secretary by October 15th. If a school drew down a total of $10,000 during the reconciliation period ending September 15, the Secretary should have received FDSLP loan disbursement records (supported by promissory notes) totalling $10,000 by October 15th.

Changes: None.

Section 685.401 Rules for a School Making Loans in the FDSLP

Section 685.401(b)(1)

Comment: A number of commenters asked if schools would be held responsible for the accuracy of information provided by the borrower in the loan origination process.

Discussion: A school is not held responsible for information that is provided by the borrower, provided the school has no evidence or documentation that the information submitted by the applicant is incorrect. However, the borrower will be responsible for the accuracy of information provided in connection with a loan application.

Changes: The Secretary has amended the final regulations to include a provision from the FFEL Program regulations to the effect that unless the borrower is subject to verification or the school has conflicting documentation, the school may rely upon statements made by the borrower.

Section 685.401(c)

Comment: A number of commenters asked what constitutes "all required information" that must be provided by the borrower before a school can disburse FDSLP loan proceeds.

Discussion: Each Federal Direct Stafford and Federal Direct SLS borrower must complete and sign a FAFSA and a FDSLP promissory note before receiving the loan. In addition, each Federal Direct PLUS borrower must complete and sign a combination application/promissory note before receiving a Federal Direct PLUS loan. If these forms are not completed by a borrower, the school may not disburse FDSLP loan proceeds.

Changes: None.

Section 685.401(c)

Comment: A couple of commenters noted that the NPRM did not explicitly require that FDSLP student loans be multiply disbursed although the HEA specifies that FDSLP loans will be made with the same terms and conditions as FFEL Program loans.

Discussion: The Secretary agrees with the commenters.

Changes: The final regulations have been revised to incorporate language requiring FDSLP student loans to be multiply disbursed.

Section 685.403 Disbursing Borrowers' Loan Proceeds and Counseling Borrowers.

Section 685.403(c)

Comment: Many commenters objected to the provision requiring a school to obtain a separate written authorization from the borrower in order to release loan proceeds. The commenters noted that an alternative process had recently been approved for use in the FFEL Program for schools using Electronic Funds Transfer (EFT) and should be available to schools in the FDSLP.

Discussion: The Secretary agrees with the commenters and has allowed for a similar process in the final regulations.

Changes: The final regulations have been revised to allow a school to use the authorization statement that will be included in FDSLP promissory notes, provided that the school gives a statement to the borrower within 30 days following each disbursement showing the disbursement applied to the student's account.

Section 685.403(f) and (g)

Comment: A number of commenters asked who would be responsible for the materials used by FDSLP schools for entrance and exit counseling.

Discussion: In the FDSLP, the Secretary will develop materials for a FDSLP school to use, if it so chooses, for entrance and exit counseling. In addition, the Secretary will provide borrower-specific information regarding a borrower's FDSLP loans for a school's use in exit counseling.

Changes: None.

Section 685.406 Withdrawal Procedure for Schools in the FDSLP

Section 685.406(b)

Comment: Many commenters opposed the provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program until the end of the demonstration period. The commenters argued that the provision was unfair to schools that made a good faith effort to participate, but found participation in the FDSLP to be more than they could manage administratively.

Discussion: The Secretary is concerned that schools selected for participation in the FDSLP have an incentive to make the FDSLP work. In addition, because participation will be limited and participating schools will be selected using statistically sound methods, withdrawal of a significant number of schools would seriously undermine the reliability of the cross section of schools and thus the evaluation. However, the Secretary is sensitive to the fact there may be reasons why a school might wish to withdraw despite having made a good faith effort to participate. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program.

Changes: The provision that prohibited a school that withdraws from the FDSLP from participating in the FFEL Program for the duration of the demonstration program has been removed from the final regulations. The final regulations have been revised to allow a school to withdraw if the school makes a written request with an explanation of why it seeks the withdrawal, and the Secretary approves the request. In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program. If a school's request is approved by the Secretary, the withdrawal will become effective after the June 30 following the school's request.

Section 685.407 Remedial Actions

Section 685.407(a)

Comment: Many commenters expressed concern over a school's liability for loans that are unenforceable. Other commenters asked what arrangements are available to schools for relief when a promissory note is unavailable.

Discussion: A school will be financially liable if, due to an error of the school, the loan is unenforceable, or if a borrower receives more than the amount for which the borrower was eligible. This policy is the same for schools participating in the FFEL Program.

If a school cannot furnish the promissory note to the Secretary for a loan it has already disbursed, it will not be exposed to a liability if the school can secure a signed promissory note from the borrower. If a signed promissory note cannot be obtained, the school will be liable for the amount it has disbursed. A school can reduce its potential for liability by forwarding promissory notes to the Secretary and receiving a confirmed acceptance prior to disbursing the loan proceeds or by maintaining a copy of the promissory note at the school. Once the Secretary has accepted the promissory note, the school will no longer be potentially liable for the promissory note.

Changes: None.

Section 685.408 Administrative and Fiscal Control and Fund Accounting Requirements for Schools Participating in the FDSLP

Section 685.408(h)(1)

Comment: Many commenters objected to the requirement that a FDSLP school have a separate bank account for FDSLP funds that it draws down. Many schools indicated that they already have accounting systems in place that would accomplish whatever benefits a separate bank account would provide. Other commenters opposed the requirement because schools already have other Federal accounts for other ED programs and should not be required to set up another account for another Federal program. Other commenters said the cost of opening up another separate bank account would be prohibitive. One commenter pointed out that 31 U.S.C. 6503(h) prohibits Federal agencies from requiring States (including State schools) to deposit Federal funds in a separate bank account.

Discussion: A critical measure of the success of the FDSLP will be the ability of the Secretary and schools to manage and account for funds used to make FDSLP loans. These funds can only be used to make FDSLP loans. In order to ensure program integrity, FDSLP funds must be easily tracked and auditable. While many schools have accounting systems that meet these needs, many schools do not.

Although, the Secretary does not necessarily agree with the commenter that 31 U.S.C. 6503(h) prohibits requiring a State school participating in the FDSLP to maintain a separate bank account, the Secretary has nevertheless eliminated the separate account requirement for State institutions.

Changes: The final regulations have been revised so that State schools are not required to have a separate bank account.

Section 685.408(h)(2)

Comment: Several commenters objected to the requirement that schools maintain an interest-bearing account for FDSLP funds.

Discussion: The provision does not require FDSLP funds to be maintained in a separate interest-bearing account. However, if funds are kept in an interest-bearing account, any interest earned must be returned to the Secretary.

Changes: The Secretary has amended the final regulations to clarify that interest earned on FDSLP funds must be returned to the Secretary.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number has not been assigned.)

Dated: June 29, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 685 to read as follows:

PART 685—FEDERAL DIRECT STUDENT LOAN PROGRAM

Subpart A—Purpose and Scope

Sec.

Subpart B—School Eligibility and Selection

Subpart C—Borrower Provisions

Subpart D—Requirements, Standards and Payments for FDSLP Schools

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (FDSLP), the Secretary makes loans to enable a student or his or her parents to pay the costs of the student's attendance at postsecondary schools. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students.

(2) Federal Direct Supplemental Loans for Students (SLS) Program, which provides loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students.

(b) The Secretary makes a FDSLP loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the FDSLP.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the FDSLP. Participation in the FDSLP enables an eligible student or his or her parents to obtain a loan to pay for the student's cost of education at his or her institution.

(2) A school that is participating in the FDSLP may not certify loans under the Federal Family Education Loan Program, as defined in 34 CFR part 600.

(b) Eligible students who are enrolled at a school participating in the FDSLP may borrow under the Federal Direct Stafford Loan and Federal Direct SLS programs. Parents of eligible dependent students may borrow under the Federal Direct PLUS program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (FDSLP)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Supplemental Loans for Students (SLS) Program
Federal Work-Study Program
Independent student
Parent
State
U.S. citizen or National

(2) The following definitions are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program

Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association
Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the FFEL Program under the Higher Education Act of 1965, as amended, 34 CFR part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Post-deferment grace period

(b) The following definitions also apply to this part:

Actual interest rate: The annual interest rate charged on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that may be charged under the Act on a loan.

Borrower: An individual to whom a FDSLP loan is made.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or through the crediting of the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a FDSLP loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a loan period, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants, and to the extent funding is available, campus-based aid the student would be expected to receive if the student applied, whether or not the student has applied for that aid; and

(viii) In the case of a Federal Direct PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Federal Direct Stafford loan, Federal Pell grant, and campus-based aid that the student has been or will be awarded.

(ix) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior FFEL Program or FDSLP loan was received, the amount of Federal Stafford, Federal SLS, and Federal PLUS loan proceeds withheld by the lender or the amount of Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan proceeds withheld by the Secretary on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include those amounts used to replace the expected family contribution, including—

(i) Federal Direct SLS and Federal Direct PLUS loan amounts;

(ii) Private and State-sponsored loan program loan amounts; and

(iii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Expected family contribution: The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

FDSLP school: A school that has an agreement with the Secretary under § 685.400 to participate in the FDSLP.

Federal Direct PLUS Program: A loan program authorized by title IV–D of the Act that provides loans to parents of undergraduate students attending FDSLP schools with loans that have the same terms and conditions as Federal PLUS Program loans.

Federal Direct Stafford Loan Program: A loan program authorized by title IV–D of the Act that provides loans to students attending FDSLP schools with loans that have the same terms and conditions as Federal Stafford Loan Program loans.

Federal Direct Supplemental Loans for Students (SLS) Program: A loan program authorized by Title IV–D of the Act that provides loans to students attending FDSLP schools with loans that have the same terms and conditions as Federal SLS Program loans.

Grace period: The period that begins on the day after a Federal Direct Stafford loan borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins. For a Federal Direct SLS borrower who also has a Federal Stafford or Federal Direct Stafford loan on which the borrower has not yet entered repayment, an equivalent period after the borrower ceased to be enrolled as at least a half-time student at an eligible institution.

Half-time student: A student enrolled in a school that is participating in the FFEL Program or the FDSLP and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Loan period: The period for which a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan is intended. The loan period must coincide with a bona fide academic term established by the school, for which institutional charges are normally assessed.

Origination fee: A fee, payable by the borrower, that is used to help defray the costs of the FDSLP.

Repayment period: (1) For a Federal Direct Stafford loan, the period beginning on the date following the expiration of the grace period and ending no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct SLS loan, the period that begins on the date the loan is disbursed, or if the loan is disbursed in more than one installment, the date the last disbursement is made and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

(3) For a Federal Direct PLUS loan, the period that begins on the date the loan is disbursed and ends no later than 10 years from that date, exclusive of any period of deferment or forbearance.

School: (1) An "institution of higher education" as that term is defined in section 481 of the Act.

(2) The term includes only those individual units or programs within a school that satisfy the definition of "eligible program" in 34 CFR part 668.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student acceptances for enrollment, student enrollments, or student retention; and

(ii) *Promote the availability* means—

(A) Provide a prospective or enrolled student with loan application forms;

(B) Provide other information relating to the FDSLP to a prospective or enrolled student in order to encourage the student to finance his or her education with a FDSLP loan; or

(C) Otherwise use the availability of FDSLP loans as a recruiting or retention tool.

Temporarily totally disabled: The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 60 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services for a period of at least 90 days.

Totally and permanently disabled: The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length, and is designed to lead to a degree or certificate at or below the baccalaureate level.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A of this part contains general information regarding the purpose and scope of the FDSLP.

(b) Subpart B of this part contains provisions regarding eligibility and selecting schools that will participate in the FDSLP.

(c) Subpart C of this part contains provisions that apply to borrowers in the FDSLP.

(d) Subpart D of this part contains certain requirements that apply to schools in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—School Eligibility and Selection

§ 685.200 Application instructions for schools to participate in the FDSLP or the control group.

(a) A school that wishes to participate in the FDSLP or the control group must submit an application to the Secretary by October 1, 1993. The school shall supply the information requested in the School Participation Application provided as Appendix B to this part. A school may use a single application to apply for participation in the FDSLP or the control group.

(b) Schools that wish to apply as a consortium shall supply the information requested for each of the schools in the consortium. A school that applies as part of a consortium may not apply individually.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Requirements for schools to participate in the FDSLP.

(a) A school participating in the FDSLP must be an eligible institution as defined in 34 CFR part 600.

(b) A school participating in the FDSLP must be able to use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting information to the Secretary.

(c) A school applying to participate in the FDSLP must have a cohort default rate as defined in section 435(m) of the Act that is less than 25 percent in at least one of the two most recent years for which cohort default rates have been published by the Secretary.

(d) A school applying to participate in the FDSLP must be located in a State.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.202 Selection process for schools in the FDSLP.

(a) *General.* The Secretary uses statistical methodology to ensure that a cross section of schools participating in the FFEL Program is represented in the FDSLP.

(b)(1) The Secretary groups the universe of FFEL Program participants by various categories into "cells," taking into consideration institutional control, length of academic program, size of student enrollment, percentage of FFEL Program student borrowers, geographic location, annual loan volume, default experience, and demographic composition of the student body.

(2) If a school applies for participation in the FDSLP, it is selected unless there are too many applicant schools from the cell to which the school belongs.

(3) If there are too many applicants from a particular cell, the Secretary makes random selections from among the applicants to give each applicant the same probability of selection.

(4) If there are too few applicants from a particular cell, all applicants are selected, and the Secretary randomly selects additional schools from that cell from among the non-applicants to obtain the desired cross section of schools participating in the FDSLP.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.203 Selection process for schools in the control group.

(a) *General.* After determining which schools would participate in the FDSLP, the Secretary selects a control group using a statistical methodology to ensure a cross section of schools from the remaining universe of schools participating in the FFEL Program.

(b) The procedures set forth in § 685.202 to select schools for participation in the FDSLP are also used to select schools for the control group.

(c) The fact that a school applies for participation in the FDSLP but is not selected neither increases nor decreases the school's probability of being selected to be in the control group.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.204 Appeal procedure for schools selected to participate in the FDSLP or the control group.

(a) *General.* A school may appeal to the Secretary to decline its selection to participate in the FDSLP or the control group. Such an appeal must demonstrate good cause (for example, extreme administrative burden) for the Secretary to grant the school's appeal.

(b) A selected school that does not wish to participate must appeal to the Secretary within fifteen (15) days of the date the school is notified of its selection to participate. The Secretary does not grant an appeal that is made after fifteen (15) days of when the school was notified unless the school can demonstrate extenuating circumstances that prevented the appeal from being made on a timely basis.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart C—Borrower Provisions

§ 685.300 Borrower eligibility.

(a)(1) *Student borrower.* A student is eligible to receive a Federal Direct Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(1)(iii) of this section, a dependent undergraduate student, is eligible to receive a Federal Direct SLS loan, if the student is enrolled in an FDSLP school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford loan or Federal Direct SLS loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii) In the case of any student who seeks a Federal Direct SLS loan for the cost of attendance at a school that participates in the FDSLP, has—

(A) Received a determination of need for a Federal Direct Stafford loan, and if determined to have need in excess of $200, has requested a Federal Direct Stafford loan from the school; and

(B) Received a certification of graduation from a school providing secondary education or the recognized equivalent;

(iii) For purposes of a dependent undergraduate student's eligibility for a Federal Direct SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal Direct PLUS loan does not constitute an exceptional circumstance;

(iv)(A) Reaffirms any FFEL Program or FDSLP loan amount that previously was cancelled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off; and

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan;

(v)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that any FDSLP loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(vi) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(vii) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) *Special conditions for subsidized Federal Direct Stafford Loan borrowers.* (i) To qualify for interest benefits on a Federal Direct Stafford loan, a borrower must demonstrate financial need in accordance with title IV, part F of the Act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower.* A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirement of paragraphs (a)(1)(iv) and (a)(1)(v) of this section; and

(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history.

(ii) For purposes of this paragraph (b)(7)(i), an adverse credit history means that as of the date of the credit report, the applicant is 90 or more days delinquent on any debt.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Federal Direct SLS loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a period of enrollment to replace the expected family contribution for that loan period.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.301 Obtaining and repaying a loan.

(a)(1) *Application for a Federal Direct Stafford loan.* To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan and the school is willing to make the loan, the school shall obtain a completed promissory note from the student and originate the loan on behalf of the Secretary.

(2) *Application for a Federal Direct SLS loan.* To obtain a Federal Direct SLS loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct SLS loan, and the school is willing to make the loan, the school shall obtain a completed promissory note from the borrower and originate the loan on behalf of the Secretary.

(3) *Application for a Federal Direct PLUS loan.* To obtain a Federal Direct PLUS loan, the parent shall complete an application and submit it to the school for certification. After the school certifies the application, the school submits the application to the Secretary. If the parent does not have an adverse credit history and the school is willing to make the loan, the school shall originate the loan on behalf of the Secretary.

(b) *Repaying a loan—(1) General.* The borrower is obligated to repay the full amount of the loan, late fees, collection costs, and any interest not subsidized by the Secretary.

(2) *Federal Direct Stafford loan repayment.* Generally, a borrower is not required to make any payments on the principal of a Federal Direct Stafford loan during the time the borrower is in school. If the borrower qualifies, the Secretary subsidizes the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to pay the accruing interest on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan except during authorized periods of deferment.

(3) *Federal Direct SLS loan repayment.* The repayment period for a Federal Direct SLS loan begins immediately on disbursement of the loan. The first payment of principal and interest on a Federal Direct SLS loan is due from the borrower within 60 days after the loan is fully disbursed unless a borrower who is also a Federal Stafford or Federal Direct Stafford loan borrower requests that repayment on the Federal Direct SLS loan be deferred until the borrower's grace period on the Federal Stafford or Federal Direct Stafford loan expires. The borrower is responsible for the interest that accrues during the life of the loan.

(4) *Federal Direct PLUS loan repayment.* The repayment period for a Federal Direct PLUS loan begins immediately on disbursement of the loan. The first payment of principal and interest on a Federal Direct PLUS loan is due from the borrower within 60 days after the loan is fully disbursed.

(5) *Deferment of repayment.* Repayment of principal on an FDSLP loan may be deferred under the circumstances described in 34 CFR 685.305.

(6) *Default.* If a borrower defaults on a loan, the Secretary adds collection costs to the amount owed by the borrower.

(c) *Cancellation.* (1) *Death.* If a borrower, or the student on whose behalf a parent borrowed, dies, the obligation of the borrower and any endorser to make any further payments is canceled.

(2)(i) *Total and permanent disability.* If a borrower becomes totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(ii) A physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State must certify the borrower's total and permanent disability in order for the loan obligation to be canceled.

(3) *Bankruptcy.* If a borrower has his or her loan obligation discharged in bankruptcy, the obligation of the borrower to make any further payments on the loan is canceled.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.302 Charges for which FDSLP borrowers are responsible.

(a) *Interest—(1) Applicable interest rates under the Federal Direct Stafford Loan Program.* (i) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has an outstanding balance on a previous Federal Stafford or Federal Direct Stafford loan, the applicable interest rate is the applicable rate charged on that previous loan.

(ii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford or Federal Direct Stafford loan but has an outstanding balance of principal or interest on a Federal PLUS or Federal SLS loan made for a period of enrollment beginning before July 1, 1988 or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the applicable interest rate is 8 percent.

(iii) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford or Federal Direct Stafford but has an outstanding balance for a Federal PLUS or Federal SLS loan made for a period of enrollment beginning on or after July 1, 1988 but before October 1, 1992, or on a Federal Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988 but before October 1, 1992, the applicable interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance on a Federal Stafford loan or Federal Direct Stafford but has an outstanding balance of principal or interest on a Federal SLS or Federal PLUS loan that was disbursed on or after October 1, 1992 or a Federal Consolidation loan that repaid a Federal Stafford loan for which the first disbursement is on or after October 1, 1992, the applicable interest rate is 8 percent.

(v) If a borrower, on the date the promissory note evidencing a Federal Direct Stafford loan is signed, has no outstanding balance of principal or interest on any FFEL Program or FDSLP loan, the applicable rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 91-day Treasury Bills auctioned at the final auction held prior to June 1, plus 3.10 percent; or

(B) 9 percent.

(vi) For a Federal Direct Stafford loan made to a borrower with an outstanding FFEL Program loan, if at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the Secretary—

(A) Calculates an adjustment in an amount specified under paragraph (a)(1)(vii) of this section; and

(B) Credits the adjustment to reduce the outstanding principal balance of the loan if the borrower's account is not more than 30 days delinquent on December 31 of any year for which an adjustment is payable.

(vii) For the purpose of paragraph (a)(1)(vi), the amount of an adjustment for a calendar quarter is equal to—

(A) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(B) Multiplied by the outstanding principal balance of the loan;

(C) Divided by 4; and

(D) Prorated for the portion of the quarter during which the borrower is responsible for the payment of interest on the loan.

(2) *Applicable interest rates under the Federal Direct PLUS Program.* The applicable interest rate on a Federal Direct PLUS loan is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(ii) 10 percent.

(3) *Applicable interest rates under the Federal Direct SLS Program.* The applicable interest rate on a Federal Direct SLS Program loan is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(i) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding that July 1–June 30 period, plus 3.1 percent; or

(ii) 11 percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the beginning date of the in-school period;

(ii) During the in-school period or grace period;

(iii) During a period of authorized deferment;

(iv) During a period of authorized forbearance; or

(v) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct SLS and Federal Direct PLUS programs, the Secretary requires the borrower to pay on a monthly or quarterly basis, or may capitalize on a quarterly or less frequent basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a FFEL Program or FDSLP loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(4) For a borrower who is in a period of deferment, or a required medical or dental internship forbearance, and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) *Loan fee for Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loans.* The Secretary—

(1) Charges a borrower a loan fee on a Federal Direct Stafford, Federal Direct SLS or Federal Direct PLUS loan not to exceed 8 percent of the principal amount of the loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each late installment under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within 10 days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provisions of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) *Collection charges after default.* If a borrower defaults on an FDSLP loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.303 Loan limits.

(a) *Federal Direct Stafford Loan Program annual limits.* (1) In the case of a student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for enrollment in a program of study of at least a full academic year in length;

(ii) $1,750 for enrollment in a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, for that second year may not exceed—

(i) $3,500 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,325 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,175 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(3) In the case of a student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length; and

(iii) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length;

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Federal Direct Stafford and Federal Stafford Loan Program loans made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *Federal Direct PLUS Program annual limit.* The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(d) *Federal Direct PLUS Program aggregate limit.* The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(e) *Federal Direct SLS Program annual limit.* The total amount of all Federal Direct SLS loans, in combination with Federal SLS loans, that a student may borrow for any academic year of study—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) $3,325 for enrollment in a program of study of at least two-thirds of an academic year but less than a full academic year in length; and

(iii) $1,675 for enrollment in a program of study of at least one-third of an academic year but less than two-thirds of an academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.

(f) *Federal Direct SLS Program aggregate limit.* The total unpaid principal amount of Federal Direct SLS and Federal SLS loans may not exceed—

(1) $23,000 for an undergraduate student.

(2) $73,000 for a graduate or professional student.

(g) *Minimum loan interval.* The annual loan limits applicable to a student shall apply to the greater of—

(1) The length of the school's academic year; or

(2) Seven consecutive months.

(h) *Treatment of Federal Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Federal Consolidation loan counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal Stafford and Federal Direct Stafford loans; and

(2) For the Federal Direct SLS Loan Program, equals the percentage of the original amount of the Federal Consolidation loan attributable to the Federal SLS and Federal Direct SLS loans.

(i) In no case may a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a Federal Direct PLUS loan, the 10-year repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date the loan is fully disbursed.

(2)(i) For a Federal Direct SLS loan, the 10-year repayment period begins on the date the loan is disbursed, or, if the loan is disbursed in multiple installments, on the date of the last disbursement of the loan. Except as provided in paragraph (a)(2)(ii) of this section, the first payment is due within 60 days after the date the loan is fully disbursed.

(ii) For a Federal Direct SLS borrower who has not yet entered repayment on a Federal Direct Stafford loan, the borrower may postpone payment, consistent with the grace period on the borrower's Federal Direct Stafford loan.

(3) Except as provided in paragraphs (a) (4) and (5) of this section, for a Federal Direct Stafford loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is 7 percent per year, 9 months following the date on which the borrower is no longer

enrolled on at least a half-time basis at an eligible school; and

(ii) For a borrower with a loan for which the initial applicable interest rate is 8 or 9 percent per year, 6 months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(4) For a borrower of a Federal Direct Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 685.402. However, a school may grant the borrower one restoration to in-school status if the borrower fails to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 685.402.

(5) A Federal Direct Stafford loan borrower may upon written request begin the repayment period prior to the end of the grace period. In this event, a borrower waives the remainder of the grace period.

(6) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period.

(7)(i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a borrower is entitled to at least 5 years, but not more than 10 years, to repay a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, calculated from the beginning of the repayment period.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 685.305 or § 685.306, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, and 10-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than 5 years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the Secretary a repayment period of less than 5 years. Subject to paragraph (a)(7)(iii) of this section, a borrower who makes such a request may, by written notice to the Secretary at any time during the repayment period, extend the repayment period to a minimum of 5 years.

(8) If, with respect to the aggregate of all loans held by the Secretary, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the Secretary may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1)(ii) and (2) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's FFEL Program and FDSLP loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the Secretary agree, the amount paid may be less.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the maximum repayment period unless forbearance, as described in § 685.306, or deferment, as described in § 685.305, has been approved.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Deferment.

An FDSLP borrower is entitled to the same deferments as an FFEL Program borrower under the conditions specified in 34 CFR 682.210, with references therein to an FFEL Program borrower understood to mean an FDSLP borrower, references therein to a Federal Stafford, Federal SLS, or Federal PLUS loan understood to mean a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, and references therein to a lender understood to mean the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in § 685.305 were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.306 Forbearance.

(a)(1) An FDSLP borrower or endorser may receive forbearance from the Secretary if the borrower or endorser is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower or endorser requests forbearance in accordance with procedures established by the Secretary, and—

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 685.305 and the Secretary does not subsidize the interest benefits on behalf of the borrower under § 685.300(a)(2).

(2) If payments of interest are forborne, they are capitalized.

(b) Upon the written request of a borrower whose eligibility for an internship or residency deferment under 34 CFR 682.210(n) has expired, the Secretary grants forbearance of payment of principal, and, unless otherwise indicated by the borrower, interest, in 12-month intervals, until the borrower has completed the internship or residency.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Borrower responsibilities.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL Program and FDSLP loans of the borrower and, for a parent borrower, of the student, including any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in local address during enrollment.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by

the Office of Management and Budget under control number 1840–0657)

Subpart D—Requirements, Standards, and Payments for FDSLP Schools

§ 685.400 Agreement between an eligible school and the Secretary for participation in the FDSLP.

(a)(1) *General.* Participation of a school in the FDSLP means that the school's students are eligible to receive FDSLP loans. To participate in the FDSLP, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations;

(ii) The Student Assistance General Provisions, 34 CFR part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR part 600.

(b) In the participation agreement, the school shall—

(1) Certify that information provided to the Secretary with regard to each student's or parent's eligibility for an FDSLP loan will be correct and consistent with borrower eligibility requirements.

(2) Agree to use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting requested information to the Secretary.

(3) Agree to timely forward promissory notes for loans made under the FDSLP as well as other information required by the Secretary.

(4) Agree to comply with conditions that the Secretary may require for testing income-contingent repayment methods.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.401 Rules for a school making loans in the FDSLP.

(a) *General.* An FDSLP school, acting as the agent of the Secretary, is responsible for all loan-making duties, including determining the amount of the loan, processing the promissory note and other required forms, approving the borrower for the loan, explaining to the borrower his or her rights and responsibilities under the loan, and having the borrower sign the promissory note.

(b)(1) A school participating in the FDSLP shall ensure that any information it provides to the Secretary in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan must include—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.300 and § 685.302;

(ii) The student's estimated cost of attendance for the period for which the loan is sought;

(iii) The student's estimated financial assistance for the period for which the loan is sought;

(iv) For a Federal Direct Stafford loan, the student's eligibility for interest benefits;

(v) For a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan, the disbursement date(s) and disbursement amounts of the loan proceeds; and

(vi) The student's loan amount.

(3) A school may not certify a Federal Direct Stafford, Federal Direct PLUS, or Federal Direct SLS loan application, or combination of loan applications, for a loan amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.303; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford that is eligible for interest benefits, the borrower's expected family contribution for that period.

(4) A school may refuse to certify a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan application or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to FDSLP loans because of the borrower's race, sex, color, religion, national origin, age, disability status, or income.

(5) A school may not assess a fee for the completion or certification of any FDSLP loan data.

(c) *Disbursing a loan.* (1) Before disbursing a loan, a school must determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student. A school may not ask the borrower to sign an FDSLP promissory note before it has been fully completed.

(2) A school shall establish disbursement dates for any Federal Direct Stafford or Federal Direct SLS loan as follows:

(i) Disbursements must be in two or more installments;

(ii) No installment may exceed one-half the loan; and

(iii) At least one-half of the loan period must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(d) *Promissory note.* (1) The Secretary provides promissory notes for use in the FDSLP and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall obtain from the borrower an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(3) A school shall give the borrower and any endorser a copy of each executed promissory note.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.402 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.403 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) A school may not deliver any loan proceeds without first obtaining an executed legally enforceable promissory note from the borrower.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section, or as provided in (b)(2)(iii) of this paragraph, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 685.300, from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the proceeds of an FDSLP loan.* (1) Except as provided in paragraph (c)(4) of this section, the school shall, not more than 30 days prior to the first day of the loan period, obtain the student's or parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FDSLP program loan to be made, and after the student has registered either—

(i) Disburse the proceeds to the student borrower subject to paragraph (d)(3) of this section; or

(ii) Credit the student's account in accordance with paragraph (d)(2) of this section, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (d)(3) of this section not later than 45 days after the disbursement of the funds.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 685.404(c).

(3) A school may not make the first disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Stafford, SLS, Federal Direct Stafford, or Federal Direct SLS loan until 30 days after the first day of the student's program of study.

(4) The authorization statement included in the borrower's promissory note will meet the authorization statement requirement in paragraph (c)(1) of this section if the school provides a notice to the borrower within 30 days of the disbursement date informing the borrower that the FDSLP loan funds have been credited to the student's account at the school.

(d) *Disbursing FDSLP loan proceeds.* (1) A school may not make a loan if the student does not register for the loan period.

(2)(i) For purposes of paragraph (c)(1)(ii) of this section, a school may not make the first disbursement of a loan by crediting a registered student's account earlier than 3 weeks before the first day of classes of the loan period.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(3) For purposes of paragraph (c)(1) of this section, a school may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the loan period.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school within 30 days of the period described in § 685.404(b) shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of any loan proceeds delivered by the school to the student.

(e) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the period of enrollment for which the loan was intended; or

(ii) Before the end of the period of enrollment for which the loan was intended but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if it has received a completed promissory note prior to whichever condition specified in paragraph (e)(1) of this section applies.

(3) Notwithstanding paragraph (e)(2), a school may not make—

(i) A late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended if the loan was subject to delayed delivery under § 685.403(c)(3);

(ii) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct SLS loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(iii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(f) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct SLS borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct SLS loan made to a borrower who has not received a Federal Stafford or Federal SLS loan for attendance at the school and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or

a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Federal Stafford, Federal SLS, Federal Direct Stafford, or Federal Direct SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Federal Direct Stafford or Federal Direct SLS loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (f)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment of a loan for service under the Peace Corps Act, Domestic Volunteer Service Act of 1973, or for comparable full-time service as a volunteer with a tax-exempt organization.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* Before the delivery of any Federal Direct Stafford or Federal Direct SLS loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct SLS, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reduce the disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraphs (f) and (g) were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.404 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under § 685.405.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) 45 days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30 days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) 25 days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 685.402. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) 60 days; or

(ii) 6 months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a

physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in § 685.404 were approved by the Office of Management and Budget under control number 1840–0657)

§ 685.405 Payment of a refund to the Secretary.

(a) *General.* By applying for an FDSLP loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to an FDSLP loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to an FDSLP loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 685.404(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 685.404(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.406 Withdrawal procedure for schools in the FDSLP.

(a) A school participating in the FDSLP may submit a written request to withdraw from the FDSLP explaining why it seeks to withdraw from participation in the FDSLP.

(b) The Secretary reviews the school's request to determine if the school has the ability to administer the FDSLP properly and notifies the school of his decision to approve or disapprove the request within 30 days of receiving the school's request.

(c) In deciding whether to approve a school's request, the Secretary considers if the reasons included with the request are unique to the FDSLP, or would exist whether or not the school participated in the FDSLP or the FFEL Program.

(d) If a school's request is approved by the Secretary, the withdrawal will become effective after the June 30 following the school's request.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.407 Remedial actions.

(a) *General.* The Secretary requires a school to purchase that portion of an FDSLP loan that is unenforceable, that the borrower was ineligible to receive, or for which, contrary to the school's certification, the borrower was ineligible to receive interest subsidies. The school shall make arrangements acceptable to the Secretary for reimbursement of interest the Secretary has subsidized for any loan determined to be ineligible for interest subsidies. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest subsidies, resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the FDSLP in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in 34 CFR 685.400.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.408 Administrative and fiscal control and fund accounting requirements for schools participating in the FDSLP.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR Part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1)(i) Shall keep all records required under the regulations in this part for 5 years following the last day of the borrower's attendance at the school;

(2) Shall keep for 5 years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions.

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct SLS, and Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.103;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan for which the borrower applies for interest subsidies under § 685.300, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct SLS, or Federal Direct PLUS loan—

(i) The date the school made each loan disbursement and the amount of that disbursement; and

(ii) A copy of the borrower's written authorization required under § 685.403(c)(1) to transfer the initial and subsequent disbursements of each FDSLP loan;

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any relevant information;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct SLS loan has changed his or her permanent address, the school shall notify the Secretary within 30 days thereafter.

(g)(1) *Accounting requirements.* A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending FDSLP funds in accordance with generally accepted accounting principles.

(h)(1) *FDSLP bank account.* The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for FDSLP funds. The account shall require the written approval of the borrower for each FDSLP loan for which funds are released from the account. The school shall notify in writing the bank where the FDSLP account is located that the FDSLP account contains Federal funds. This notice must be given by including the word "Federal" in the name of the school's FDSLP account. Unless the school is a State entity, the FDSLP account must be a separate bank account.

(2) Any interest earned on FDSLP funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) A school shall divide the functions of authorizing payments and disbursing funds so that no single office has responsibility for both functions to borrowers under the FDSLP.

(j) Funds received by a school under this part may be used only to make FDSLP loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1087a *et seq.*)

(Reporting and recordkeeping requirements contained in paragraphs (c) and (f) were approved by the Office of Management and Budget under control number 1840–0657)

Appendix A—Addendum to Program Participation Agreement for Participation in the Federal Direct Student Loan Program

Name of Institution _____
Address of Institution _____
IRS Employer Identification Number _____
OPE Identification Number _____

The postsecondary educational institution listed above, referred to hereafter as the "Institution" and the United States Secretary of Education, referred to hereafter as the "Secretary," agree that this addendum is made a part of the Program Participation Agreement (PPA) between the Institution and Secretary, executed for the Secretary on _____. The purpose of this addendum is to allow the Institution to participate in the Federal Direct Student Loan Program (FDSLP), authorized by title IV, part D of the Higher Education Act of 1965, as amended (the HEA).

The Institution and the Secretary agree that the following Article is added to the PPA:

"Article IVA. Federal Direct Student Loan Program—Specific Provisions

1. The Institution agrees to establish and maintain a direct loan program at the Institution, subject to the program statutes and implementing regulations of title IV, part D of the HEA, under which the Institution will:

a. Determine the eligibility in accordance with section 484 of the HEA of student and parent borrowers who seek student financial assistance at the Institution;

b. Estimate the need of each student in accordance with title IV, part F, of the HEA;

c. Originate loans to eligible students and eligible parents in accordance with title IV, part D, and not charge any administrative fees to those students or parents for the origination activities;

d. Provide timely information concerning the status of student and parent borrowers to the Secretary or the Secretary's agents for loan collection purposes;

e. Use the software or specifications provided by the Secretary to collect the data necessary for making loans and transmitting information to the Secretary;

f. Participate in the FDSLP for its duration, subject to procedures for withdrawal established by section 455 of the HEA.

2. The Institution agrees that the note or evidence of obligation on the loan shall be the property of the Secretary and that the Institution will act as the agent of the Secretary for the purpose of making loans under the FDSLP.

3. The Institution will accept responsibility and liability stemming from its failure to perform its functions under this agreement.

4. The Institution agrees that students at the Institution and their parents (with respect to those students) will not be eligible to

participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal PLUS loan program for the period during which the Institution participates in the FDSLP.

5. If the Secretary offers income contingent repayment and the Institution is selected by the Secretary pursuant to section 453(f) of the HEA, the Institution agrees:

a. To offer borrowers the option of income contingent repayment, based on an annual review of the borrower's Federal income tax return, to any student who applies for a loan under the FDSLP;

b. To include terms and conditions in the notes or other agreements entered into by the borrower, required by the regulations governing the FDSLP, to facilitate the testing of income contingent repayment methods, including the requirement that the borrower disclose subsequent income.

c. That the notes or other agreements entered into by the borrower will provide for the discharge of loans after not more than 25 years of income contingent repayment, as specified by the Secretary by regulations.

6. The Institution agrees to provide borrowers with the loan information specified in section 463A of the HEA.

7. The Institution will provide access to the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or persons designated by these officials, to program and accounting records.

Signature of Chief Executive Officer _____

Date _____

Print name and title _____

For the Secretary _____

Date _____

BILLING CODE 4000-01-U

Appendix B

SCHOOL PARTICIPATION APPLICATION

School Information

School Name: _____

School Address: _____

_____

_____

Signature and Title of School Official: _____

_____

Phone Number of School Official: _____

IRS Employer Identification Number: _____

School Code used in the Federal Family Education Loan Program: _____

Participation Information

Please check the appropriate box(es) if you would like to participate in:

☐ the Federal Direct Student Loan Program

☐ the Federal Family Education Loan Program control group

School Consortium Information

If applying as part of a consortium, please indicate 1) The exact name of the consortium; or 2) The lead school in the consortium:

Public Reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0657, Washington, D.C. 20503.

INSTRUCTIONS FOR APPLYING TO PARTICIPATE

A school must complete this application and submit it to the Secretary by October 1, 1993. Applications postmarked after October 1, 1993 will not be accepted. A school may apply to participate in the FDSLP, the control group, or either. The selection for schools to participate in the FDSLP will be conducted first.

Each school included as part of a consortium of schools must furnish the information requested in the application. A school that is applying as part of a consortium may not also apply individually.

Applications should be sent to:

U.S. Department of Education
Federal Direct Student Loan Program
400 Maryland Avenue, SW
2100 Corridor, L'Enfant Plaza
Washington, DC 20202-5162

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July 2, 1993

Part V

Department of Education

34 CFR Part 692

State Student Incentive Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 692

RIN 1840–AB72

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the State Student Incentive Grant (SSIG) Program regulations to clarify them, to make minor technical changes, and to implement statutory changes made by the Higher Education Amendments of 1992 to the Higher Education Act of 1965, as amended (HEA).

DATES: Comments must be received on or before August 2, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fred H. Sellers, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, U.S. Department of Education, 400 Maryland Avenue, SW, room 4018, ROB–3, Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary is proposing to revise the existing SSIG Program regulations to implement statutory changes required by the Higher Education Amendments of 1992, enacted July 23, 1992 (Pub. L. 102–325) (1992 amendments), which amend the HEA. These revised regulations also propose changes to the SSIG Program regulations to reduce burden and clarify existing rules where possible.

The SSIG Program provides financial incentives for States to establish and to maintain financial assistance programs that make grants and provide work-study assistance to students with substantial financial need. The President's proposed fiscal year 1994 budget includes no funding for the SSIG Program. The SSIG Program has already achieved its purpose of encouraging States to provide financial aid to needy students, and Federal support is no longer needed. However, the Secretary is proposing regulations for this currently funded program under the requirements of the General Education Provisions Act (GEPA) (20 U.S.C. 1232).

The SSIG Program supports National Education Goal 5, which calls for every adult American to be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. A description of the proposed major changes to the SSIG Program regulations follows.

Definitions

Section 692.4(b) of the proposed SSIG Program regulations defines the terms "academic year," "institution of higher education," "postsecondary vocational institution," and "proprietary institution of higher education" as they are defined in section 481 of the HEA. These amendments to section 481 of the HEA require that the Secretary amend definitions in the Student Assistance General Provisions regulations in 34 CFR part 668. When the Secretary publishes final regulations amending these definitions, he will also amend the definitions in § 692.4(b) in the SSIG Program regulations to reference those changes.

Maximum Award

Section 692.21(c) of the program regulations has been revised to comply with amended section 415C(b)(2) of the HEA to reflect the increase in the maximum annual SSIG award that can be provided by a State to a student from $2,500 to $5,000.

Fees for Data Collection

Under amended section 415C(b)(4) of the HEA, no parent or student may be charged a fee that is payable to an entity other than a State for collecting data used to make a determination of financial need for SSIG Program purposes. Currently, many application processors who process data for SSIG Program need-analysis purposes charge a fee to the applicant for the service that is payable directly to the application processor. The Secretary is proposing to amend § 692.21 of the regulations to add this new requirement under a new paragraph (e). The Secretary also proposes to require that each State provide an assurance of compliance with this requirement on its annual application to participate in the SSIG Program. The impact of this proposed regulatory amendment will be to require the States, and the processors with whom they do business, to develop new procedures to account for such payments, if any, to comply with the new statutory requirement. The Secretary also has modified the language in the multiple data entry servicer contracts dealing with the Federal student financial aid application processing system to require that all successful offerers be in compliance with this new requirement.

Aid to Part-time and Independent Students

Amended section 415C(b)(7) of the HEA requires that if a State's allocation under this subpart is based in part on the financial need demonstrated by students who are independent students or attend their institution on a less-than-full-time basis, a reasonable portion of the State's allocation shall be made available to these students. This amendment is consistent with similar amendments to the campus-based programs in Subpart 3 of Part A, Part C, and Part E of Title IV of the HEA, in which the Congress clearly establishes its intent to make more Federal student financial aid available to part-time and independent students. This amendment is a significant change from the prior statute's language, which required a State to ensure that a reasonable portion of SSIG funds be disbursed to students who attended institutions less-than-full-time only if the State allocated funds directly to its institutions using a formula that included consideration of the financial need of these students. Most States, however, make awards directly to students and, therefore, do not allocate funds to institutions. The few States that do allocate funds to institutions include the financial need of less-than-full-time students in their allocation formula. Therefore, the previous provision affected very few States.

Amended section 415C(b)(7) of the HEA also changes the focus of this provision from using a State's SSIG formula for allocating funds to institutions, if any, to using the State's allocation from the Secretary. If the State's allocation from the Secretary is based on a formula that includes the financial need of students who are independent or attend an institution less-than-full-time, then the State must ensure that those students receive a reasonable proportion of SSIG funds. This amended provision will now affect all States, as all States make SSIG awards to independent students as well as dependent students, and several States make SSIG awards to students who attend less-than-full-time. We are proposing to implement this statutory change in § 692.21(g) of these regulations.

For the States to report uniformly to the Department on awarding a reasonable amount of SSIG funds to independent students, the Secretary is proposing to require that any State making SSIG awards use the Federal definition of "independent student" as defined in section 480(d) of the HEA.

Furthermore, the Secretary is proposing to amend § 692.41 to require that States use the term "independent student," as defined by section 480(d) of the HEA, in a State's own need-analysis system or a need-analysis system combining the State's system with the Federal system under Part F of Title IV of the HEA in order to obtain the Secretary's approval of the State's system. The Secretary believes that requiring the States to use the revised Federal definition of independent student is consistent with the intent of Congress in the 1992 amendments. The 1992 amendments strongly encourage States to use the free Federal student aid need-analysis application for their student need-analysis processing as evidenced by the "no fee payable" amendment to the SSIG statute and the amendment to section 483(a)(1) of Part G (General Provisions) of Title IV of the HEA; these permit the Secretary to include not more than eight nonfinancial data elements selected in consultation with the States to assist States in awarding State student financial assistance. This proposed change also would reduce the burden on student financial aid applicants, a major goal under the 1992 amendments.

Allotment Formula

Section 415B(a) of the program statute provides the statutory allotment formula used by the Secretary to allocate Federal SSIG funds to the States participating in the program. Under section 415B(a)(1), no State may receive less than the amount it received in fiscal year 1979, regardless of what the State is scheduled to receive under the allotment formula. However, it is impossible to allot to each State the amount it received in fiscal year 1979 when the total amount of SSIG funds appropriated for a fiscal year are less than those appropriated in fiscal year 1979. Therefore, under § 692.10(a)(2) of the program regulations, the Secretary allots to each State an amount of Federal funds that represents the same ratio to the current total appropriation as the allocation the State received in fiscal year 1979 bears to the total fiscal year 1979 appropriation for all States. Since fiscal year 1979, the SSIG appropriation has remained equal to or less than the fiscal year 1979 appropriation, and, therefore, the States have received an allocation based on this formula.

For the purpose of allocating SSIG funds to participating States, the Secretary is proposing to amend § 692.10(b) of the program regulations to redefine students who are "deemed eligible" to participate in the SSIG Program as students who were reported by the State as SSIG recipients in the most recently available performance report data. Under § 692.10(b) of the current program regulations, a student is deemed eligible to participate in a State's SSIG Program for fund allocation purposes if the student is in attendance at an institution that is eligible to participate in the State's program. Therefore, under this current definition, students who do not necessarily meet the SSIG Program eligibility requirements under § 692.40 are counted in the allotment formula.

The Secretary is proposing to change the existing broad definition to one that is narrower by counting for purposes of making allotments to States only those students who received an SSIG award in the most recent award year as reported by the State in the most recently available data. The Secretary is proposing to collect these data on the number of recipients from each State's most recent SSIG Program performance report. By using the most recently available performance report data, the States will not be required to conduct a new data collection. The Secretary invites comment on the desirability of the use of the latest available performance report data in the allotment formula process in order for a State to receive additional Federal SSIG funds above the "hold-harmless" amount.

This proposed change provides for the better use of Federal funds under the program by (1) rewarding States that have made a strong commitment of their State grant funds to the SSIG Program as reflected by the State's number of SSIG recipients and (2) encouraging States to maintain or expand their commitment to the SSIG Program and their level of expenditures for State grant programs. As another alternative, the Secretary could have proposed that the States collect the number of students in each State attending eligible institutions who meet the SSIG Program eligibility requirements under § 692.40 of the program regulations. However, the number of these students is not currently reported to the Secretary and is probably also not readily available in many States. Thus, collecting these data would be likely to increase significantly the data collection burden on the States by requiring many States to collect new data to report to the Secretary.

Furthermore, the Secretary believes that using the number of SSIG recipients as the base of the allotment formula provides an incentive for a State to expand the size of its SSIG Program in order to receive additional Federal SSIG funds above the "hold- harmless" amount. The "hold-harmless" amount of funds is the allotment each State received in fiscal year 1979 under the SSIG Program. Under section 415B(a)(1) of the program statute, if an appropriation exceeds the fiscal year 1979 appropriation, each State still would continue to receive at least its "hold-harmless" amount regardless of the results of the allotment formula. However, to exceed the allotment of funds beyond the "hold harmless" amount States would necessarily have to elect to include a higher percentage of their State grant funds under the SSIG Program, as determined by the States' number of SSIG recipients. The Secretary will allot additional SSIG funds to States above their "hold-harmless" amounts by using the following steps:

(1) Calculate the States' projected allotments by dividing each State's number of recipients by the total recipients for all States and then multiply that number by the appropriation.

(2) Compare each State's projected allotment calculated in step 1 to its "hold-harmless" amount and select only States where the projected allotment exceeds the "hold-harmless" amount.

(3) For the States selected in step 2, calculate the amount the Secretary will allot above the "hold-harmless" amount to each of these States by dividing each of the selected State's number of recipients by the total recipients for all of the selected States and then multiply that number by the amount of the appropriation above the total "hold-harmless" amount. Consequently, the Secretary believes that these States that have made a greater commitment to the SSIG Program would be rewarded.

The Secretary also believes that encouraging the inclusion of additional State funds in the SSIG Program stabilizes the grant funds available to students from the States and promotes the best use of Federal funds by encouraging the expansion of State grant assistance. In four recent instances, for example, State funding was maintained, or a former reduction in funding was increased in the following award year, as a result of the SSIG matching requirements.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive

Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. State and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 692.21 of the SSIG Program regulations contains an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department will submit a copy of these sections to OMB for its review. (44 U.S.C. 3504(h))

The public reporting and recordkeeping burden for the information collection required under § 692.21 of this notice of proposed rulemaking is estimated to average one-half hour per State.

Organizations and individuals desiring to submit comments on the information collection requirements contained in this notice should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington DC, 20503; Attention: Daniel Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there might be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 692

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.096, State Student Incentive Grant Program.)

Dated: June 24, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 692 of title 34 of the Code of Federal Regulations as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

1. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c through 1070c-4, unless otherwise noted.

* * * * *

2. Section 692.3 is amended by revising paragraphs (b) and (d) and the authority citation to read as follows:

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (Ineligibility of Certain Individuals to Receive Assistance).

(2) 34 CFR Part 76 (State-Administered Programs).

(3) 34 CFR Part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension [Nonprocurement] and Governmentwide Requirements for Drug-Free Workplace [Grants]), and

(8) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

(d) The Student Assistance General Provisions in 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c–1070c-4)

3. In § 692.4, paragraph (a) is amended by removing the terms, "Academic year (§ 668.2)", "Campus-based programs (§ 668.2)", "Guaranteed Student Loan Program (§ 668.2)", "Income Contingent Loan Program (§ 668.2)", "Pell Grant Program (§ 668.2)", "PLUS Program (§ 668.2)", and "Postsecondary vocational institution (§ 668.5)"; by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

* * * * *

(b) *Definitions in the HEA.*

(1) The following term used in this part is defined in section 480(d) of the HEA:

Independent student

(2) The following terms used in this part are defined in section 481(a), (b), (c) and (d) of the HEA:

Academic year
Institution of higher education
Postsecondary vocational institution
Proprietary institution of higher education

* * * * *

4. Section 692.10 is amended by revising paragraph (b) to read as follows:

§ 692.10 How does the Secretary allot funds to the States?

* * * * *

(b) For the purpose of paragraph (a)(1) of this section, a student is "deemed eligible" to participate in a State's SSIG Program if the student was a recipient of an SSIG award as reported by the State in the most recently available data.

5. Section 692.21 is amended by removing the periods after paragraphs (a) and (d); adding semi-colons after paragraphs (a) and (d); redesignating paragraphs (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), and (j), respectively; adding a new paragraph (e); and revising paragraphs (b), (c), and (g) to read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(b) Provides assistance only to students who meet the eligibility requirements in § 692.40;

(c) Provides that assistance under this program to a full-time student will not be more than $5,000 for each academic year;

* * * * *

(e) Provides that no student or parent shall be charged a fee that is payable to an organization other than the State for the purpose of collecting data to make a determination of financial need in

accordance with paragraph (d) of this section;

* * * * *

(g) Provides that, if a State awards grants to independent students or to students who are less-than-full-time students enrolled in an institution of higher education, a reasonable portion of the State's allocation must be awarded to those students;

* * * * *

§ 692.30 [Amended]

6. Section 692.30 is amended by removing the first of the duplicate paragraphs (e)(2).

7. Section 692.41 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; by designating the undesignated introductory text as paragraph (a); by revising newly redesignated paragraph (a)(1); and by adding a new paragraph (b), to read as follows:

§ 692.41 What standards may a State use to determine substantial financial need?

(a) * * *

(1) A system for determining a student's financial need under Part F of Title IV of the HEA;

* * * * *

(b) The Secretary approves a need-analysis system under paragraph (a)(2) or (3) of this section only if the need-analysis system applies the term "independent student" as defined under section 480(d) of the HEA.

* * * * *

[FR Doc. 93–15645 Filed 7–1–93; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Friday
July 2, 1993

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, 135
Standards for Approval of a Wet Runway Reduced V_1 Methodology for Takeoff on Wet and Contaminated Runways; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 25471; Notice No. 87–13]

RIN 2120–AB17

Standards for Approval of a Wet Runway Reduced V_1 Methodology for Takeoff on Wet and Contaminated Runways

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the Federal Aviation Regulations (FAR) by adding new standards for transport category airplanes to increase safety for rejected takeoffs from wet and contaminated runways. The FAA has determined that an alternative approach, intended to make the current takeoff airworthiness standards more rational, will be used to address rejected takeoffs on wet runways in a future rulemaking proposal.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Flight Test and Systems Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (206) 227–1129.

SUPPLEMENTARY INFORMATION: On November 30, 1987, the FAA published Notice of Proposed Rulemaking (NPRM) 87–13 (52 FR 45578) proposing to amend parts 25, 121, and 135 of the Federal Aviation Regulations. Notice 87–13 proposed adding new standards for transport category airplanes to increase safety for rejected takeoffs from wet and contaminated runways. Slippery runways have been identified as a contributing factor in a number of rejected takeoff accidents. The available braking friction is reduced on a slippery runway, resulting in the airplane requiring a longer distance to stop. Notice 87–13 proposed lowering the takeoff decision speed, V_1, by allowing a reduced height over the end of the runway for a continued takeoff. This reduced V_1 methodology would have made more runway length available for stopping on a slippery runway.

Since publication of notice 87–13, the FAA has been involved in a review of the takeoff airworthiness standards, including the effect of slippery runways. As a result, the FAA intends to propose improved standards for determining rejected takeoff performance, including accounting for the effect of wet runways, in a future rulemaking. Accordingly, Notice of Proposed Rulemaking 87–13, Docket No. 25471, published in the **Federal Register** on November 30, 1987 (52 FR 45578), is withdrawn.

Issued in Washington, DC on June 25, 1993.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service

[FR Doc. 93–15721 Filed 7–1–93; 8:45 am]

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Federal Register

Vol. 58, No. 126

Friday, July 2, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
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FEDERAL REGISTER PAGES AND DATES, JULY

35357–35840.....1
35841–36116.....2

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12737 (Revoked by EO 12852).....35841
12852.....35841
12775 (Revoked in part by EO 12853).....35842
12779 (Revoked in part by EO 12853).....35842
12853.....35842
Administrative Orders:
Determinations:
93–29 of June 29, 1993.....35357

5 CFR

581.....35845

7 CFR

2.....35359
1097.....34359
1098.....35361
1099.....34362

8 CFR

245.....35832

12 CFR

710.....35363

14 CFR

39.....35860
Proposed Rules:
25.....36116
29.....35411
39.....35413, 35899, 35899, 35900, 35902, 35904, 35905
121.....36116
135.....36116

16 CFR

Proposed Rules:
244.....35414
412.....35907

17 CFR

239.....35367
249.....35367

18 CFR

Proposed Rules:
375.....35415

19 CFR

148.....35862

20 CFR

404.....36008
416.....36059

21 CFR

Proposed Rules:
876.....35416

22 CFR

126.....35864

24 CFR

203.....35369
Proposed Rules:
207.....35724
213.....35724
220.....35724
221.....35724
232.....35724
234.....35724
241.....35724
244.....35724
880.....35416
881.....35416
883.....35416
884.....35416
886.....35416

26 CFR

Proposed Rules:
31 (2 documents).....35419

27 CFR

9.....35865, 35877
Proposed Rules:
4.....35908
5.....35908

28 CFR

0.....35371
55.....35371

29 CFR

1400.....35377
1915.....35512
2606.....35377
2612.....35377
2615.....35377
2616.....35377
2622.....35377
2623.....35377

31 CFR

203.....35395
585.....35828

32 CFR

199.....35400

34 CFR

378.....35762
685.....36008
Proposed Rules:
692.....36110

40 CFR

228.....35884

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 890/P.L. 103–44

To amend the Federal Deposit Insurance Act to improve the procedures for treating unclaimed insured deposits, and for other purposes. (June 28, 1993; 107 Stat. 220; 3 pages)

Last List June 15, 1993

Public Laws

103d Congress, 1st Session, 1993

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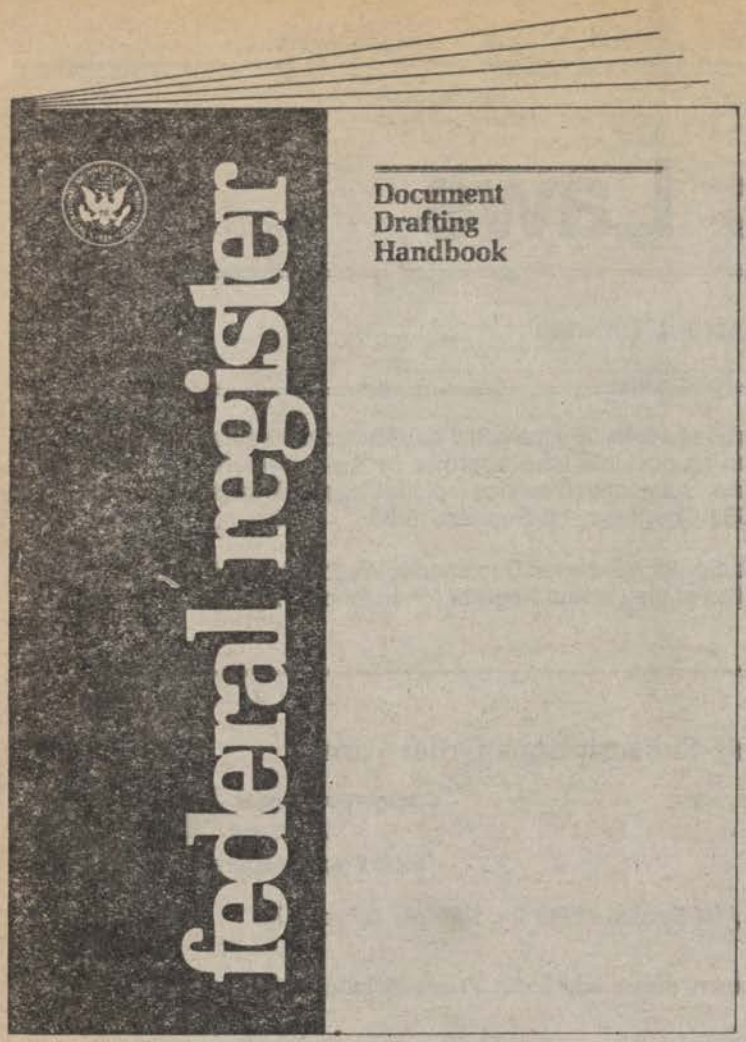

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